

No. 11015

United States
Circuit Court of Appeals
For the Ninth Circuit.

CHESTER BOWLES, Administrator, Office of
Price Administration,

Appellant,

vs.

LIGHTHOUSE OYSTERS, INC., an Oregon
Corporation,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Oregon

FILED

JUL 2 - 1945

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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for Appellee.

In the District Court of the United States
for the District of Oregon

Civil No. 2427

CHESTER BOWLES, Administrator, Office of
Price Administration,

Plaintiff,

vs.

LIGHTHOUSE OYSTERES, INC., an Oregon
Corporation,

Defendant.

COMPLAINT

Count One

I.

Plaintiff, as Administrator of the Office of Price Administration, brings this action for treble damages on behalf of the United States pursuant to the provisions of Section 205(e) of the Emergency Price Control Act of 1942 (Pub. L. No. 421, 77th Cong., 2d Sess., 56 Stat. 23), enacted January 30, 1942, hereinafter called the Act.

II.

Jurisdiction of this court is conferred upon this Court by Sections 205(c) and 205(e) of the Act.

III.

At all times since July 13, 1943, there has been in effect, pursuant to the Act, Maximum Price Regulation 418, as amended (duly published in the Federal Register prior to the acts herein com-

plained of) hereinafter called the "Regulation", establishing maximum prices for fresh fish and seafood sold by producers and wholesalers.

IV.

From and after the 13th day of July, 1943, to the date of this complaint, defendant, doing business as Lighthouse Oysters, Inc., has been and now is a service and delivery wholesaler as defined in the Regulation, with his principal place of business at 111 Southwest Front Street, Portland, Oregon.

[1*]

V.

Since July 13, 1943, defendant has, on numerous occasions, within the District of Oregon and elsewhere, sold and delivered to certain retail dealers fresh fish and seafood at wholesale at prices higher than the maximum prices therefor established by said Regulation and the amendments thereto.

VI.

The transactions referred to in Paragraph V occurred more than six months after the date of approval and enactment of the Act. None of said sales was made for use or consumption other than in the course of trade or business.

VII.

Three times the aggregate amount by which the prices received by the defendant in the transactions referred to in Paragraph V and VI of this Count

*Page numbering appearing at foot of page of original certified Transcript of Record.

exceed the maximum prices provided by Maximum Price Regulation 418, as amended, equals Nine Thousand Four Hundred and Fifty One and 74/100 (\$9,451.74) Dollars.

Wherefore, plaintiff prays for judgment on behalf of the United States against the defendant in the sum of Nine Thousand Four Hundred and Fifty One and 74/100 (\$9,451.74) Dollars.

(S) CECELIA P. GALLAGHER

Of Attorneys for Plaintiff

[Endorsed]: Filed April 28, 1944. [2]

[Title of District Court and Cause.]

ANSWER

FIRST DEFENSE

I.

Defendant admits Paragraphs I, II, and III of plaintiff's complaint except that plaintiff alleges the regulations referred to in Paragraph III were changed from time to time during the period covered.

II.

Defendant denies Paragraphs V, VI and VII and alleges that it never sold any goods in excess of the maximum price.

SECOND DEFENSE

Defendant alleges that the plaintiff circulated new, different and inconsistent interpretations to

the said regulations on countless and innumerable occasions and the Oregon wholesale and retail fish trade could not, except by chance, observe the rules and regulations concerned in this litigation.

THIRD DEFENSE

Defendant through its various agents appeared at the offices and before the staff members of plaintiff voluntarily on many occasions and offered to comply with any and all of the said regulations and has done so.

Wherefore, defendant demands that this action be dismissed and that it recover costs.

(S) ALTON JOHN BASSETT
Attorney for Defendant.

Endorsed]: Filed May 16, 1944. [3]

State of Oregon,
County of Multnomah—ss.

I, Joe Jaha, being first duly sworn say that I am the defendant in the within entitled cause and the foregoing answer is true as I verily believe.

(S) JOE JAHA

Subscribed and sworn to before me this 16th day of May, 1944.

[Notarial Seal]

(S) ALTON JOHN BASSETT
Notary Public for Oregon.

My Commission Expires 8/17/45.

Due service of the foregoing answer by receipt of a duly certified copy thereof, in Multnomah County, Oregon, on the ... day of May, 1944, hereby is accepted.

CECELIA P. GALLAGHER

By W. A. STOCKMAN

Attorney for defendant. [4]

[Title of District Court and Cause.]

PRETRIAL ORDER

This cause came on regularly for Pretrial Conference before the Honorable James A. Fee, one of the Judges of the above entitled Court, on Wednesday, July 12, 1944. Plaintiff appeared by Cecelia P. Gallagher, of counsel, and defendant appeared in person and by Alton John Bassett, his counsel.

Plaintiff's complaint sets forth one cause or claim against the defendant based on alleged violation of Section 4(e) of the Emergency Price Control Act of 1942 (Pub. L. No. 421, 77th Cong. 2nd Sess. 66 Stat. 23) as amended, and violations of the provisions of Maximum Price Regulation 418, as amended, effective now and from and after the 13th day of July, 1943, promulgated and duly put into effect pursuant to the provisions of said Act, and duly published in the Federal Register (8 F. R. 9366) prior to the acts herein complained of. This action is brought pursuant to Section 205(e) of the Act.

ADMITTED FACTS

Pursuant to the agreements and stipulations made at said conference, it is ordered that the following facts shall be considered as admitted and established. [5]

I.

Maximum Price Regulation 418 (hereinafter referred to as the Regulation), as amended, was duly promulgated and put into effect in accordance with the provisions of the Emergency Price Control Act of 1942, as amended, (Pub. L. No. 421, 77th Cong., 2nd Sess. 66 Stat. 23) and that jurisdiction of this Court over the count set forth in plaintiff's complaint herein is conferred by Section 205(c) of said Act.

II.

The Regulation establishes legal maximum selling prices of various species of fresh fish and seafood including the commodities listed in Plaintiff's Pretrial Exhibits 1 and 3. The defendant made numerous sales of said commodities in the course of trade between the dates of August 8, 1943, and December 31, 1943, on the dates per invoice number in the amounts and at the prices set forth in Plaintiff's Pretrial Exhibit 1.

III.

Defendant has furnished to plaintiff the duplicate original sales invoices kept by defendant; said sales invoices represent all the sales of fresh fish and seafood made by defendant between the periods of August 5 and December 31, 1943. Plain-

tiff has made a tabulation of said sales invoices on yellow sheets numbered 1 through 23; Column I of said tabulation shows sales invoice numbers; Column II shows dates of sale; Column III shows species and amounts sold and the prices charged therefor. Columns I, II and III represent a full, true and correct summary of the contents of defendant's sales invoices. The above described yellow sheets numbered 1 through 23 may be introduced as plaintiff's Pretrial Exhibit 1 in lieu of any original or duplicate original sales invoices.

IV.

The remaining columns of figures shown on Plaintiff's Pretrial Exhibit I are computations made by plaintiff and purport to show the maximum prices of each species of fresh fish listed, and the total amount of the alleged overcharges. Defendant does not admit the accuracy of those remaining figures. [6]

V.

Defendant has furnished to plaintiff his purchase invoices which represent all the purchases of fresh fish and seafood made by defendant between the dates of August 5 and December 31, 1943. Plaintiff has made a tabulation of the purchases of the species of fresh fish listed in Plaintiff's Pretrial Exhibits 1 and 3 on yellow sheets numbered A through C. Said tabulations represent a full, true and correct summary of the contents of such purchase invoices. The yellow pages numbered A through C may be introduced as plaintiff's Pretrial

Exhibit 2 in lieu of any original or duplicate original purchase invoices.

VI.

The sales tabulated in plaintiff's Pretrial Exhibit 1, from August 5 to December 31, 1943, were subject to the ceiling prices established by Maximum Price Regulation 418, as amended.

VII.

Plaintiff's Pretrial Exhibit 3 is a table of prices for the species of fresh fish listed in Column III of plaintiff's Pretrial Exhibit 1, taken from Table E of Maximum Price Regulation 418, as amended, and represents the correct maximum prices for those species, sizes and types of dress listed in plaintiff's Pretrial Exhibit 3.

VIII.

Defendant did not specify in his invoices the sizes, grades and styles of dress of the fresh fish he sold, as he is required to do by Section 13(b) of said Regulation. That as the statement furnished the purchaser at the time of delivery did not identify the size, grade and style of dressing, the maximum price which may be charged for the fresh fish involved in the sale after November 3, 1943, is the maximum price for the lowest priced size, grade and style of dressing of the species of fresh fish sold.

DISPUTED FACTS

It is further ordered that the following facts are in dispute and constitute the issues of fact to

be decided at the trial of his case [7] upon the exhibits theretofore submitted and evidence offered at said trial.

I.

The proper and legal selling prices for the species of fresh fish set forth in Column III of plaintiff's Exhibit 1. It is plaintiff's contention that the maximum prices for the species listed in Column III of plaintiff's Pretrial Exhibit 1 should be those prices listed in Column V of plaintiff's Pretrial Exhibit 1.

II.

The total amount by which the consideration of each of said sales exceed the lawful maximum price therefor, if in fact, such consideration did exceed such a maximum price. It is defendant's contention that it is free of any violation as charged by the complaint of the plaintiff.

III.

It is contended by the defendant that any charges in excess of the maximum price which may be shown herein were not made wilfully or with knowledge that it was charging more than the ceiling price, but that such overcharges, if any, were made innocently. It is plaintiff's contention on this point that defendant was both wilful and negligent in collecting more than the maximum prices for the fresh fish it sold.

EXHIBITS

The following exhibits are identified and offered by the plaintiff:

Pretrial Exhibit 1, plaintiff's computation contained on yellow sheets numbered 1 through 23. Columns I, II and III of said exhibit represent a full, true and correct summary of the contents of defendant's sales invoices. Columns IIV and V of said exhibit represent plaintiff's computation of maximum prices for each species and fresh fish listed in Column III and the total amount of the alleged overcharges.

Pretrial Exhibit 2, plaintiff's compilation contained on yellow sheets numbered A through C, which represent defendant's purchases of the species of fresh fish listed in plaintiff's Pretrial Exhibits 1 and 3. Said [8] compilation represents a full, true and correct summary of the contents of such purchase invoices.

Pretrial Exhibit 3, a table of prices for the species of fresh fish listed in Column III of plaintiffs' Pretrial Exhibit 1, taken from Maximum Price Regulation 418, as amended.

This Order sets forth and defines all the issues presented by this case and it supersedes the pleadings filed herein and said pleadings shall be of no further effect. No additional issues are to be raised by either party except upon stipulation by the parties with the approval of the Court, or as authorized by the Court in the interests of justice.

CLAUDE McCOLLOCH

Judge

[Endorsed]: Filed October 12, 1944. [9]

In the District Court of the United States
for the District of Oregon

Civil No. 2427

CHESTER BOWLES, Administrator, Office of
Price Administration,

Plaintiff,

vs.

LIGHTHOUSE OYSTERS, INC., an Oregon cor-
poration,

Defendant.

MEMO OF DECISION

I allow single damages for the items prior to November 9, 1943, less two cents (2c) per pound in every case. I do not agree with plaintiff's interpretation of the amendment dated November 9th, and for that reason do not allow recovery after that date.

Dated October 14, 1944.

CLAUDE McCOLLOCH

Judge

[Endorsed]: Filed Oct. 14, 1944. [10]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter coming on for trial before me this 12th day of October, 1944, plaintiff appearing by Cecelia P. Gallagher, his attorney, and the defendant, Lighthouse Oysters Inc., and Joe Jaha, appearing by Alton John Bassett, their attorney, and the parties having heretofore agreed to a pre-trial order and issue having been joined on the facts in dispute therein, and the plaintiff, by leave of Court, having amended his complaint by substituting for the words and figures \$9451.74 that occur in Paragraph VII and the prayer, the words and figures \$6132.47, and testimony having been taken in regard thereto, and the Court having heard the arguments of respective counsel and now being fully advised in the premises makes the following

FINDINGS OF FACT

1. That the total alleged overcharges claimed (single damages) amount to \$2047.49.

2. That the total alleged overcharges prior to November 9, 1943 are in the sum of \$974.49 and the total alleged overcharges subsequent to November 9, 1943 are in the sum of \$1073.00.

3. That the defendant has overcharged as alleged in the complaint and as is indicated on plaintiff's exhibit "1" prior to November 9, 1943.

4. That the defendant is entitled to a credit of

\$0.02 per pound as a set off against said overcharges prior to November 9, 1943.

5. That the violation of the regulation, orders and price schedules resulting in said overcharges was not wilful and was not the result of failure to take reasonable precautions against the occurrence of the violation. [11]

From the foregoing facts the Court concludes.

CONCLUSION OF LAW

That the plaintiff is entitled to single damages for the items prior to November 9, 1943 amounting to \$974.49, less the sum of \$721.90, the sum arrived at by multiplying 36,095 pounds times \$0.02, or damages of \$252.59. CMc.

Let judgment be entered accordingly.

Dated at Portland, Oregon, this 11th day of December, 1944.

CLAUDE McCOLLOCH

United States District Judge

[Endorsed]: Filed Dec. 11, 1944. [12]

[Title of District Court and Cause.]

JUDGMENT ORDER

The above cause came on for trial on the 12th day of October, 1944, before the Honorable Claude McColloch, Judge of the above entitled Court, without a jury, the plaintiff appearing in person and through his attorney Cecelia P. Gallagher, and the

defendant appearing personally and through his attorney Alton John Bassett; witnesses having been sworn and having testified on behalf of plaintiff and defendant, and the Court having heard the testimony of witnesses and arguments of counsel, and having heretofore set out and entered Findings of Fact and Conclusions of Law,

Now, therefore, based upon said Findings of Fact and Conclusions of Law,

It Is Hereby Ordered and Adjudged that the plaintiff recover single damages in the sum of \$252.59.

Dated this 11th day of December, 1944.

CLAUDE McCOLLOCH

United States District Judge

[Endorsed]: Filed Jan. 19, 1945. [13]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To Lighthouse Oysters, Inc., an Oregon Corporation, defendant above named, and to Alton John Bassett, its attorney:

Notice is hereby given that Chester Bowles, Administrator, Office of Price Administration, plaintiff above named, hereby appeals to the Circuit Court Court of Appeals for the Ninth Circuit from that certain judgment awarding plaintiff single damages in the sum of \$252.59, made and entered

in the above entitled action on the 11th day of December, 1944.

Dated at Portland, Oregon, this 24th day of February, 1945.

/S/ F. E. WAGNER

/S/ W. DUNLAP CANNON, JR.

Attorneys for Appellant Chester Bowles, Administrator

[Endorsed]: Filed Feb. 24, 1945. [14]

[Title of District Court and Cause.]

ORDER TO FORWARD EXHIBITS

It appearing necessary that the original exhibits in the above described cause accompany the transcript of record upon appeal to the Circuit Court of Appeals for the Ninth Circuit,

It Is Ordered that the Clerk of this Court forward to the Clerk of the Circuit Court of Appeals for the Ninth Circuit all original exhibits introduced in evidence in this cause.

Dated at Portland, Oregon, this 22nd day of March, 1945.

CLAUDE McCOLLOCH

Judge

[Endorsed]: Filed March 22, 1945. [15]

[Title of District Court and Cause.]

DESIGNATION OF RECORD

Plaintiff's Appellant Chester Bowles, Administrator, Office of Price Administration, hereby designates for inclusion in the record on appeal taken by appellant from the final judgment herein the complete record and all the proceedings and evidence in the action including, without limitation, the following:

1. Plaintiff's complaint.
2. Defendant's answer.
3. Pre-trial order.
4. Transcript of trial proceedings of October 12, 1944.
5. Order to send exhibits introduced in evidence.
6. Memorandum opinion October 14, 1944.
7. Findings of Fact and Conclusions of Law.
8. Judgment Order, December 11, 1944.
9. Notice of Appeal.
10. This designation.

Dated at Portland, Oregon, this 20th day of March, 1945.

/S/ DAVID LONDON

/S/ F. E. WAGNER

Attorneys for Appellant Chester Bowles, Administrator

State of Oregon,
County of Multnomah—ss.

Due service of the foregoing Designation of Record is hereby accepted in Portland, Multnomah County this 20th day of March, 1945, by receiving a duly certified copy thereof.

ALTON JOHN BASSETT

Of Attorneys for Defendant

[17]

United States of America,
District of Oregon—ss.

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 18 inclusive, constitute the transcript of record upon the appeal from a judgment of said court in a cause therein numbered Civil 2427, in which Chester Bowles, Administrator, Office of Price Administration is plaintiff and appellant, and Lighthouse Oysters, Inc., an Oregon Corporation is defendant and appellee; that said transcript has been prepared by me in accordance with the designation of contents of the record on appeal filed by the appellant and in accordance with the rules of Court; that I have compared the foregoing transcript with the original record thereof and that it is a full, true and correct transcript of the record and proceedings had in said court in said cause, in accordance with the said designation, as the same appears of record and on file at my office and in my custody.

I further certify that I have enclosed a duplicate transcript of the testimony taken in this cause together with exhibits 1, 2, and 3.

In Tesimony Whereof, I have hereunto set my hand and affixed the seal of said Court in Portland, in said District, this 24th day of March, 1945.

[Seal] LOWELL MUNDORFF,

Clerk

By F. L. BUCK

Chief Deputy Clerk

Portland, Oregon, Thursday, October 12, 1944.

10:00 o'clock A. M.

Before:

Honorable Claude McColloch,
Judge.

Appearances:

Miss Cecelia P. Gallagher,
Enforcement Attorney,
Office of Price Administration, Portland
District, appearing for the Plaintiff.

Mr. Alton John Bassett,
Attorney for the Defendant.

PROCEEDINGS

The Court: All right. We will go ahead with this case.

Miss Gallagher: If your Honor please, in the

case of *Bowles vs. Lighthouse Oysters, Inc.*, this case is an action for treble damages brought under section 205 (e) of the Emergency Price [1*] Control Act. The claim for treble damages is based upon the sales of *Lighthouse Oysters, Inc.*, the defendant, who is a wholesaler of fresh fish and sea food to retailers and restaurants. The sales were made in the course of trade or business.

Maximum prices for fresh fish and sea food are set in dollars and cents by Maximum Price Regulation 418.

The Administrator alleges that the defendant sold fresh fish at prices which exceeded his maximum prices and that the total amount of the overcharge was \$3150.25.

We move to amend our complaint and to amend the prayer of our complaint to show that the overcharges are, after they have been recomputed, \$2047.49.

The Court: They may be amended.

Miss Gallagher: This matter came to our attention in December of 1943 upon the complaint of some retailers who had bought from the *Lighthouse Oysters, Inc.*, that they had been overcharged. Mr. Joe Jaha, who is either the corporation—acts in the capacity of a manager—was called into the Office of Price Administration for a discussion of the complaint that we had received. At that time Mr. Bassett, or Mr. Jaha, indicated that it was the first time he had ever been in the Office of Price Administration; it was the first time he had ever been in the Enforcement Divi-

*Page numbering appearing at top of page of original Reporter's Transcript.

sion, and it was his statement it was the first time he had ever been in the Price Division.

Within a week after that Mr. Bassett, who is appearing [2] for the defendant, called and said he would like to discuss the matter and see what we could do to iron it out.

Thereafter, in January, Mr. Bassett and Mr. Jaha were in my office. We discussed in a good deal of detail Mr. Jaha's method of keeping records, his method of making invoices. I explained the detail to both Mr. Bassett and to Mr. Jaha, what the requirements were, gave him a written-out sample of how he should keep them, and asked him at that time if we could examine his books and records. He said we could, and on the middle of January, 1944, an examination was started.

There were further discussions between Mr. Bassett and me from the time, all during the period since that, during February, during March.

During March Mr. Holdt, an investigator in our office, who will be our witness today, re-examined the books, because the first investigator who had made the examination was no longer in our office but was in the eastern part of the United States, unavailable.

Then in April of this year we filed our complaint. A pre-trial order has been entered and we are now before you for trial.

Regulation 418 has very carefully spelled out the requirements for keeping record by those who

buy fresh fish and sea food and those who sell it. This requirement applies only to the producers of fish and the various wholesalers of fish and does [3] not cover consumer buying, nor does it cover the retail stores.

Section 16 requires that every person making a sale shall furnish to the purchaser a copy for inspection, a written statement which shows, first, the date of the sale, the name and address of the buyer and the seller, the species sold, whether it is Chinook, under salmon particularly; and that is what we are dealing with today; whether it is Chinook, silverside, blueback, or a number of other kinds; the quantity sold, the size of the fish; the grade of the fish and the style or dressing; the price charged for the fish; and it further provides that if there is included a charge for boxing or for transportation, or for the state privilege tax that has been paid, that extra charged may be added to the price of the fish and it must be shown separately on the invoice.

On November 9th, 1943, an amendment, No. 16, was added to the regulation, which said that if the invoices failed to show the required information which we have just outlined, then the price which may be charged is the maximum price for the lowest priced size, grade and style of dressing of the species sold.

When we started our computation on this case we found that the invoices of the defendant were defective. They did not carry at all the required information. A typical examination of an invoice

would be a printed copy showing the name of the seller in printing, the name of the buyer, in almost all cases Jones, Peters—no address. That, of course, is not a fatal defect, [4] as far as the merits of the thing are concerned. It is a defect but it is not as serious as defects that I will now describe.

The invoices were printed on the side oysters, salmon, halibut, fillets; then there is room at the bottom for writing the other kind of fish in there, and I think without exception his invoices would show either salmon in printing, nothing further, and then 17 pounds at 35c a pound, or whatever the price charged, whatever the poundage sold, or it would show the printed word "Salmon" following that Chinook, either abbreviated or not, silvers and other species, without in any way indicating whether the fish was troll-caught or seine-caught; whether it was sold in round, just as it came from the river; whether it was sold drawn, with its head on, or dressed or steaks, or any other kind of a description which would make it possible to determine, either for the Office of Price Administration to determine or his customer to determine, what had been sold to him unless a notation was made by the customer at the time of the sale.

The reason that it is important to indicate the style of dressing, whether it is drawn, dressed or round, the size and the species, whether it is sold fall, pink, sockeye, Chinook, troll-caught or seine-caught, is that each species, each type of dressing and the method of keeping it, and in some in-

stances whether it is under or over $12\frac{1}{2}$ pounds, carries a different price, so that the notation that it is salmon 40 pounds, or Chinook 40 pounds, comes very short of showing the required [5] information.

When we came to make our computations of the overcharges in this case we were faced with an extreme difficulty, so we adopted this method: We read the invoices as they were made out. When we found that there was salmon sold at 35c a pound we used the name and the price that the defendant had used for selling as our basis for classification of the fish. We went through the schedule of prices and chose the fish which would come within the 35-cent bracket or as close to it as we could. If fish was sold at 17c it would be obvious he would be selling a 35- or 33-cent fish for 17c, so we took, not Chinook but a silver or another species that came within that price range. Then for all the computations between the 5th day of August, which is the first sale in August, and the 9th of November, which is the date of the amendment No. 16, which requires then that he take the lower price, we gave the defendant the benefit of any doubts that we could by giving him the highest dressed price of the type of fish most closely classified by his own name and his own prices. That gives the defendant credit for having sold between August 1st and November 9th nothing less than dressed fish on every sale. Dressed, of course, is the highest priced of the three types of dressed we have computed, round, drawn, and dressed. I

think that probably the defendant himself would admit that in many instances he sold drawn fish or that he sold round fish, but it is impossible for us to prove what he sold. His own [6] records don't show it, so we have given him the higher price, the dressed price.

On fillets that he has sold, when they have indicated on the invoice that they are fillets there is no indication whether it is salmon fillets or other kinds, we have not computed these overcharges. We have assumed the prices were correct and left them out. So actually the defendant has had credit, by our failure to include them in our overcharges, for any fillets that he may have sold.

We feel that we have given to the defendant on those sales the benefit of every reasonable doubt. Instead of trying to hold him down to a lower price, which we might reasonably hold him to under the theory that he has made an admission by his conduct, by his failure to classify, failure to keep his records correctly, that he has actually sold at a lower price, since if he had been selling at a higher price he would, if he were reasonably prudent, have indicated the information which would have allowed him to claim the higher price.

After November 9th we used the lowest price for the style of dress, and if there were any doubts which we could not in our own minds fairly resolve, we gave to the defendant all the benefit we could on it. He failed to include on his invoices any separate notation that he was passing on a box charge, freight charge or tax charge. In order

to give him full credit for any of those charges he may have paid and may have rightfully [7] passed on, we examined what he submitted to us as all his purchase invoices, and totaled all the freight he paid, all the box charge he paid, all the tax he paid, as shown on his purchase invoices, subtracted that total from our total computed overcharges, and adopted that charge.

The issues of facts in the case have been pretty well narrowed down by the pre-trial order. They cover first the proper and legal ceiling prices for the species of fresh fish set forth in Plaintiff's Exhibit 1. It is our contention that the maximum prices listed on the exhibit are the prices which should be allowed as ceiling prices. They dispute of course—it is disputed between us—the total amount which he actually overcharged, if, in fact, he has overcharged. It is plaintiff's contention that he has overcharged.

The defendant urges that any charges made in excess of the ceiling prices were not willful and were made without knowledge. The defendant contends that.

The pre-trial order has admitted facts.

The defendant furnished to us his sales invoices. Our investigator copied them onto the work sheets and copied them in this manner. Column 1 showed the invoice number; column 2 showed the date of sale; column 3 showed the fish sold, the type of fish sold, the number of pounds and the price charged for them. As to those first three columns it has been stipulated in the pre-trial order that

these figures are a correct transcription from the [8] defendant's records and that they may be admitted. The remaining columns on Exhibit 1 are contested. They show what we claim to be ceiling prices and what we claim to be the overcharges.

We have also computed in our Exhibit No. 2 the defendant's purchases, and it has been stipulated that those are a correct transcription of the purchase records furnished by the defendant and that they may be introduced in evidence.

Our Exhibit 3 is a sheet which shows the ceiling prices for various species of fish under consideration here. These prices are taken from the regulation, taken from what is called Table E, the proper table of prices by which the defendant at that time could sell. We copied it onto that to make it easy to follow, because the price schedules are complex and hard to follow in fine print. It has also been stipulated that is a correct transcription of the ceiling prices, and that that may be offered into evidence.

We have prepared photostatic copies of our Exhibit No. 1, because it is large; it is hard to follow, and we have a copy for your Honor and a copy for Mr. Bassett, which I shall hand to you when we start to introduce our exhibits.

That is my opening statement, your Honor.

Mr. Bassett: If it pleases the Court, I have never worked harder or longer on a case during my fifteen professional years and felt less prepared

than I do in this case; and I don't blame my modest ability for all of that. The OPA, as it applies to [9] the fish industry, has made it impossible for any two fishermen to agree upon the price of the specific species of fish at a certain grade; and it has likewise made it impossible for any two OPA witnesses on the Pacific Coast to agree.

Joe Jaha, the defendant in this case, the Light-house Oyster, Inc., is a very small, we might say, fish monger. His is the oyster business, and as an incident to that business, and as an accommodation to his customers, he wholesales fish on such a small scale that it is customary, not exceptional but customary for him to cut a fish to sell to a restaurant that requires a portion of one fish. It has during this nearly half year covered by this suit sold approximately 150,000 pounds of fish, and from that 150,000 pounds he has deducted all that which was dressed, all of that which was filleted, and all of that which was spoiled, so he is just a small fish monger. He has been in business in Portland for fifteen years in this business, oysters principally. He has had one bookkeeper until about a year ago, when that bookkeeper left, a man and wife, and he had to employ another. He has had the small and many large dealers up to the advent of the OPA this way: He would go to the source of supply and buy his fish at the lowest price he could get it for. He kept a record of that carefully, because he has to pay the State of Oregon a certain per cent of every pound he buys. That, of course, has always been done. But from

there on it is a matter of making out an invoice to whoever is buying fish, such and such kind, so [10] many pounds of salmon at so much money. Now when he had to call his bookkeeper in and his peddlers—he has two peddlers who go up and down the street to his accounts and say, “Do you want any fish today?” and then the order is made, your Honor, when that restaurant says, “Yes, we will have a third of a salmon.” “How big is the salmon?” first they will ask. Then if it is twenty pounds and they want ten pounds they will say, “We will take half a salmon.” At that point the invoice is made and it can’t be made until then.

The only information that the seller can have is what the peddler brings back to him. It has been impossible to teach his bookkeeper what he didn’t know, and it has been impossible to teach these fish peddlers how to make out an invoice.

Your Honor, there is not a fish house in Portland that has not done business the way we have done it. Every fish house in Portland has done the same way. They have had their reform periods when they tried to learn from the OPA what they had to do, but it has not been long until they slipped back to ten pounds of salmon at so much a pound. That has just been in the fish business on the Pacific Coast for seventy-five years.

Now is is not that simple, either, your Honor. The further difficulty in complying with what the plaintiff is saying the law is, is this: The OPA, instead of setting a ceiling price on fish at a certain place have gone into the business from the

ocean. They have said that a man fishing out on the ocean will [11] correspond with A on their table of buy and sell. A is the C.R.P.A., Columbia River Packers Association, on the dock; the cannery is B. He sells to a big primary wholesaler, who is C, who in turn sells to a secondary wholesaler, who is D. D in turn sells to the retailer, who is E. Then they said that A or B could jump over the intervening letters and sell to E at the high price, which of course all the fishermen will do when the market is scarce. When the supply is scarce and it is possible for them to do that they span the intervening letters and sell to the lowest letter, which is the highest price they can.

But inverting that, Schedule E could only pay B the B price. In other words, E and D and C were foreclosed from competing on the supply and demand market.

Then, your Honor, it is complicated further. There are, say, a hundred types of fish sold on the Portland market, including sea foods. They are sold round, meaning in their natural state, or they are sold dressed, with their heads and tails removed, and their visceral area, or they are sold further filleted, with their bones removed, their carcass, each of those having a different price.

Then, your Honor, they are sold either fresh, as removed from the river, or comparatively fresh, or frozen.

They are also sold from different points.

They are also sold in or out of the box, with ice. They are also sold in a state where there is a sales tax, [12] and in states where there are none. That is, they are purchased by this man.

Now then, he starts selling. Well, he reverses that whole schedule again, and all the things that he had to take into consideration when buying, he has to add to those he must take into consideration when selling.

There are no two experts in Portland, Oregon, for example, your Honor, among the wholesale or retail fishermen, or the fishermen themselves, who could be brought before your Honor and agree upon any rule of the OPA that applies to the fish business.

Of course, the OPA issued—first, there is the law; then, to put that law into effect, there were rules and regulations promulgated. But that, your Honor, was only the beginning. Then those men who are conscientious, honest businessmen, asked themselves, “What does this mean?” And they would go to their OPA in Portland, or Seattle, or San Francisco, or Los Angeles, and they would ask them, and the first when this was going on last year I was at their meetings in the OPA. I am not, of course, entitled to testify but they will, that they didn’t have any idea how these rules would be applied, nor did they, during the summer this law was issued, was distributed and circulated in August, about August 15th finally after some talk in July—all during the summer months and in the fall and into the winter the interpretation, which means how I am going to sell, and for how much,

depended upon whom you asked. So all the fishermen [13] did like they have always done—they asked each other, compared notes and then compared with the OPA. The OPA was then reading back to them the rule. Well, that is right of course where they started. Then later on they started giving them interpretations, and instead of clarifying it it just muddled the waters. No two dealers in Portland today know many of the rules that the OPA applies to the selling of fish.

Now our defense is, first, of course, that we have not been willful or malicious. We have rushed up to the OPA with all our books and laid them on their desk and said, "Here are our records." Well, those, instead of being self-serving instruments, seem to have been admissions against interest. We brought all our records to the OPA. They prepared our case. There is not a letter in this case, your Honor, except the law, that we didn't gladly and willingly give to the OPA to make their case out. We left our business for hours at a time to sit with this gentleman here who is going to testify; left our business to try to get all of our records for him and to explain at least what we meant by our bookkeeping system.

We claim that the OPA have disinterpreted their own rules, and we claim that they have computed incorrectly, and we claim that, because of their lack of knowledge of the fish business, they did not take into consideration the items I spoke of that reduced, of course, the amount of fish you buy to the amount you sell, which is considerable—20 to 30 per cent

when we [14] fillet, sometimes 50 per cent; 15 to 30 per cent when we dress. So when they say we bought 150,000 pounds of fish we can't account to them for 150,000 pounds unless they understand that those fish were dressed down to 50,000 to 75,000 pounds.

We didn't do it knowingly, because we don't know yet, the exact interpretation of many of these rules, and we didn't do it wilfully because we have to know how to do it to do it wilfully; and finally, your Honor, the books of this defendant show that many, many times he charged less than he could have or should have, because he didn't understand. Thousands and thousands of pounds were sold because he said, "Well, I guess that is my ceiling price and, although I am losing money on it, I have to sell it for that."

That we are going to offer, your Honor, as evidence it was not done wilfully.

The Court: All right.

THEODORE J. HOLDT

was thereupon produced as a witness in behalf of the plaintiff and, having been first duly sworn, testified as follows:

Direct Examination

By Miss Gallagher:

Q. Will you state your name, Mr. Holdt?

A. Theodore J. Holdt.

Q. Will you state your position, please, Mr. Holdt?

A. My position is investigator for the office of

(Testimony of Theodore J. Holdt.)

Price Administra- [15] tion, Portland District Office.

Q. How long have you been such an investigator?

A. Since March 1, 1944.

Q. State whether or not you have specialized in any particular commodity. A. I have, in fish.

Mr. Bassett: Pardon me. What date did he give?

Miss Gallagher: March.

Mr. Bassett: I didn't hear you, Mr. Holdt.

The Witness: March 1, 1944.

Miss Gallagher: Q. Will you state what you have specialized in?

A. I have specialized in fish.

Q. Do you know of your own knowledge where the defendant's place of business is located?

A. I do.

Q. Will you state where it is, please?

A. Portland, Oregon.

Q. Do you know of your own knowledge, from your examination of defendant's records, what classification the defendant's business is under the regulation? A. I do.

Q. Will you state what that is, please?

A. It is wholesale dealer in fish and sea foods.

Q. And what classification under the regulation? Is he a primary [16] fish shipper, or is he—

A. Well, he is a service and delivery wholesaler.

Q. In the course of your duties have you investigated the books and records showing the sales of fish by the defendant in this case? A. I have.

Q. Of what did your investigation consist?

(Testimony of Theodore J. Holdt.)

A. The investigation consists of examination of the sales invoices and the purchase invoices, and a transcription of those invoices onto work sheets.

Q. You have stated the results of your examination are computed on work sheets?

A. The results are computed on work sheets, yes.

Miss Gallagher: May I have the exhibits to have them identified.

Q. I show you Plaintiff's Pre-Trial Exhibit No. 1 and ask if those are the work sheets to which you have just referred? A. They are.

Q. I hand you Plaintiff's Pre-Trial Exhibit No. 2 and ask you to state whether or not this is a compilation of purchases you have referred to?

A. It is.

Q. And I hand you Plaintiff's Pre-Trial Exhibit No. 3 and ask you if you made this compilation, and I ask you to state what it is.

A. Yes, sir. This is a price schedule applicable to the sales, [17] Table E Schedule.

Miss Gallagher: Your Honor, we offer as separate exhibits Plaintiff's Pre-Trial Exhibits 1, 2 and 3.

The Court: They are admitted.

(The summary of contents of defendant's sales invoices, etc., consisting of sheets marked 1 to 23, both inclusive, two sheets therein being numbered 2 and two sheets therein being numbered 3, having been previously marked Plaintiff's Pre-Trial Exhibit 1, was further marked "and trial"; the compilation of Purchases,

(Testimony of Theodore J. Holdt.)

consisting of three sheets, lettered "A", "B", and "C", so offered and received, having previously been marked Plaintiff's Pre-Trial Exhibit 2, was further marked "and trial"; and the tabulation or compilation of price schedule applicable to the sales, headed "Table 'E' salmon prices", consisting of two sheets, so offered and received, having been previously marked Plaintiff's Pre-Trial Exhibit 3, was further marked "and trial".)

A

	Fro. Chinook	Fro. Salmon	Bx. Frt. Tax
9-			740 4 00
9-			16 02
10-			4 26
10-			4 26
10-			8 52
10-			12 54
10-			5 00
10-			14 76
10-			6 00
11-			4 00
11-			4 00
11-			6 00
9-			
9-			
9-			
8-			
8-			1.5† 14 99
11-20	30½		
11-			
11-			
11-			
11-			
11-37	.305		
11-		220	26
11-			
11-			
11-12	.305		
12-			
12-69	.305		
12-68	.305		
12-09	.305		
12-98	18 .305		
	—		
12-07	192 .305		
	24		
12-75	— .305		
	4.32		
12-			
12-			
12-			
95*		220*	

PLAINTIFF'S PRE-TRIAL AND TRIAL EXHIBIT No. 2

PURCHASES

A

			S. Fresh Dr. Silvers	S. Fresh Falls, Dr.	Chinook	St. Hds. Dr.	"Salmon" Hds. Off	Fro. Chinook	Fro. Salmon	Ex. Frt. Tax
9-29	S.J.	08193	400 @ 21							740 4-00
9-30	S.J.	08363	400 @ 21	600	.1475					16 02
10- 2	"	08201	200 21							4 26
10- 9	"	08237	200 21							4 26
10-19	"	08291	400 21							8 52
			401							
10-21	"	08309	403 21	403	.1475					12 54
10-23	"	08320		500	.1475					5 00
10-27	"	08344	200 21	800	.1475					14 76
10-29	"	08352		400	.1475					6 00
11- 1	"	08383		400	.1475					4 00
11- 3	"	08387		400	.1475					4 00
11-15	"	08557		600	.1475					6 00
			2201*	4103*						
9-20	Portland Fish Co.	12364			1220 26					
					(Salmon)*					
9-22	" " "	12438			500 .26					
9-25	" " "	12581				450 20				
8- 6	" " "	10554					403 32			
8-23	" " "	11249			Desig. "Lge Salmon"*: 999 .295					1.5† 14 99
11-16	" " "	0356		600 18				220	30½	
11-17	" " "	0393		600 18						
11-18	" " "	0474		600 18						
11-19	" " "	0503		600 18						
11-19	" " "	0525		600 18						
11-23	" " "	0720						37	.305	
11-24	" " "	0743		400 .165					220 26	
11-26	" " "	0774								
11-26	" " "	0762		400 .165						
11-30	" " "	0948						612	.305	
12- 2	" " "	1035		200 18						
12- 2	" " "	1028						69	.305	
12- 3	" " "	1083						68	.305	
12- 7	" " "	1241						609	.305	
12-10	" " "	1366						98 18	.305	
								—		
12-10	" " "	1381						107 192	.305	
								24		
12-14	" " "	1534						475	.305	
								4.32		
						Fro. C.R.*				
12-28	" " "	2017				307 .195				
12-29	" " "	2058				400 .195				
12- 3	" " "	2105				100 .26				
			4000*		2719*	1257*	403*	2295*	220*	

* Pencilled in red.

† Circled in red.

(Testimony of Theodore J. Holdt.)

Plaintiff's Pre-Trial and Trial Exhibit No. 2—(Continued)

PURCHASES										B	
		Dr. Silvers	Rd. Chinooks	Greyling	Dr. Chinook	Hds. off Dr. Chin.	Rd. Silvers	Fall Brites	Dr. Steel H.	Chums	Box. Tax, Frt.
8-12	J. E. Lawrence	202068	400 21								5 40
9-18		203625	205	205 19							2 06
9-22		203753			54 10						
9-22		203752				181 .2275	708 .2475				2 63
9-23		203780					708 .2475				10 27
9-24		203845					183 .2475				2 66
9-25		203916			Not desig. Hds. off:*	546 .2475					7 92
9-27		203997			" "	739 .2475					10 71
9-27		203999			" "	314 .2475					4 58
9-29		204066			32 ‡ 10						
9-30		204132			Not desig. Hds. off:*	1109 .2475					16 08
10- 4		204313			Hds. off*	569 .2475					8 25
10- 5		204378	141 17			1188 .2475					20 33
10- 7		204517	551 17		Not Hds. off:*	176 .2475					14 67
10- 7		204518			" "	147 .2475					2 13
10- 8		204557			" "	150 .2475					2 06
10- 8		204597			" "	159 .2825<					2 30
10-11		204710			" "	918 .2475					13 32
10-14		204893			" "	368 .2475					5 34
10-16		205007			" "	912 .2475					13 22
10-18		205059			" "	360 .2475					5 22
10-19		205106	183 17		" "	181 .2475					5 28
10-20		205146			" "	551 .2475					7 99
10-23		205518			" "	200 .2475					3 50
10-23		205521					671 .135				16 77
10-25		205550				131 .2475		26 .12			
10-25		205540	148 17			131 .2475					3 06
11- 8		206144	62 17	—Not desig. Dr.*—	134 .2275						3 31
11- 9		206245	185						165 .1825		3 72
11-10		206202	66 17		Not desig. Dr. or Hds. off:*	95 .2475		Not desig.*:	18 .1825		6 13
11-12		206351	71 17		Not Hds. off:*	107 .2475					3 13
11-13		206396	102 17		" "	46 .2475		Not dr.*:	6 .1825		3 05
11-14		206462	150 17		" "	17 .2575<			8 .1825	920 .105	18 55
11-15		206472	121 17		" "	23 .2475			10 .1825	366 dr.*.105	11 71
11-16	None desig dr.*	206532	107 17						26 .1825	546 .105	9 13
11-20	all dr.*	205254	41 18						21 .1825	67 .105	2 46
11-26		206768	147 17		Not Hds. off:*	25 .2475			92 .1925		6 07
11-27	Not des. dr.*	206797	150 17							33 .105	4 59
11-27	" "	206791	79 17						92 .1825		3 78
11-29										320 Fro.*10	
		S† 2704	205*	86*	315*	9822*	S† 671*	26*	438* S†	2252* S†	

* Pencilled in red.

† Circled in red.

‡ Pencilled in red: #2.

(Testimony of Theodore J. Holdt.)

Plaintiff's Pre-Trial and Trial Exhibit No. 2—(Continued)

PURCHASES																		C
			Chinook		Silvers.		Steel Hds.		Chums		Fr. Chums.		Br. Falls		Fro. Br. Falls		Fro. Dr. Silvers	Ex-Prt-Tax
11-29	J. E. Lawrence Co.	206841	227	.2475	46	17	63	.1825	2252*									7 39
11-29	dr.*	206844			138	17	49	.1825										4 15
12- 1		206991							408	.115								7 79
12- 2		207016									88	10						
12- 2		207015			71	.1775							314	.105				7 61
12- 3		207048							55 Tr.*	10								
12- 3		207046			8	17			471	.105								7 75
12- 4	Dr.*	207077							93	10								
12- 4		207075			63	17	32	.1825			104	.105						3 78
12- 7		207179									242	10						
12- 7		207174	42	.2475	193	17	72	.1825										6 75
12- 8 }							83	.1825										
					37	17	164	.1825										6 55
12- 8		207217			37	17	247	.1825										6 75
12- 9		207272									227	10						
12- 9		207270	24	.2475	49	17	183 dr.*	.185	85	.105								7 01
12- 9		207334	54 Rd.*	24														
12-10		207442													1355	.215		
12-11		207477															1700	.2125
12-14	all dr.*	207478			35	.1775	15	.1825	51	.105								2 30
12-15		207577									89	10					not dr.*	
12-21		207788															253	.2125
12-21		207738																
			10269*		3231*		1346*		3415*		750*		314*		995	.215	1953*	
															2350*			

* Pencilled in red.

Internat'l Fishing Co.		Box	Spring Sal.	Can. Money	U.S. Money				Hds. off									
9-29	Hds. on*	5.00	790	.205	16695	15176		Dr. Silvers		Dr. Chinook	Dr. Chinook		Chinook		Fro. Chinook	"Salmon" Hds. off	Fro. Salmon	Rd. Chinook
9-29	Hds. on*	3.75	607	225	14032	12756	J.E.L. S.J.	2201	21									
9-22		6.00	542	205	19545	17767	J.E.L.	3231	17	315	.2275	10269	.2475					205 19
9-24	Hds. on*	1.25	300	205	6150	135.75 Can.	Port. Fish											205 19
	Hds. off*		300	235	7050	12340		5432		315		10269		2719	.26	2295	.305	403 .32
9- 8		3.75	638	225		14730								2719		2295		220 .26
							S. Fresh Falls Dr.			Dr. Steel Hds.		Rd. Silvers				403		205 19
																		205 19
			3477		63472		S.J. Co.	4103	.1475									205 19
							P.F. Co.	4000	.18	1257	.195			314	.105			205 19
							J.E.L.			1346	.1825	671	.135	26	.12	3415	.105	86 .10
								8103		2603		671		340		3415		2350 .215
																86		1953 .215
	* Pencilled in red.																	1953

* Pencilled in red.

* Circled in red.

Total purchase as indicated by purchase invoice:

S.J. J.E.L. & P.F.	41,379
International Fishing Co.	3,477
Purchases from Indians at Celilo	23,243#
Purchases from Wholesale dealers	44,856#
Total Purchases	68,099#

(Testimony of Theodore J. Holdt.)

PLAINTIFF'S PRE-TRIAL AND TRIAL EXHIBIT No. 3

TABLE "E" SALMON PRICES

Item No	Schedule	Troll or Seine	Variety	Style of Dressing	Size	1942—Price in cents per pound					Original Regulation
						Aug.	Sept.	Oct.	Nov.	Dec.	
1	27—Red Meated	Troll	Chinook	Drawn	14# and over	301½	301½	301½	301½	301½	Amendment No. 7
	27—Red Meated	Troll	Chinook	Drawn	Under 14#	261¼	261¼	261¼	261¼	261¼	
	27—Red Meated	Troll	Chinook	Dressed	12¾ and Over	33	33	33	33	33	
	27—Red Meated	Troll	Chinook	Dressed	Under 12¾ #	28¾	28¾	28¾	28¾	28¾	
	27—Red Meated	Troll	Chinook	Round	16# and Over	261¼	261¼	261¼	261¼	261¼	
	27—Red Meated	Troll	Chinook	Round	Under 16#	221½	221½	221½	221½	221½	
2	33	Seine Col. River	Chinook	Round	All Sizes	221½	221½	221½	221½	221½	
	33	Seine	Chinook	Dressed	All Sizes	281¼	281¼	281¼	281¼	281¼	
3	28	Troll	Silvers	Drawn	All Sizes	24	24	24	24	24	
	28	Troll	Silvers	Dressed	All Sizes	261½	261½	261½	261½	261½	
4	29	Seine	Silvers	Round	All Sizes	16	20	20	20	20	Amendment No. 7 Puget Sound
	29	Seine	Silvers	Dressed	All Sizes	19¾	241½	241½	241½	241½	
	30	Seine	Salmon, Fall	Round	All Sizes	16	16	16	16	16	
5	30	Seine	Salmon, Fall	Drawn	All Sizes	17¾	17¾	17¾	17¾	17¾	
	30	Seine	Salmon, Fall	Dressed	All Sizes	19¾	19¾	19¾	19¾	19¾	
6	35	Seine	Steelhead	Round	All Sizes	18	18	18	18	18	Amendment No. 7
	35	Seine	Steelhead	Dressed	All Sizes	21¾	21¾	21¾	21¾	21¾	
7	28	Troll	Silvers	Round	All Sizes	21	21	21	21	21	
	29A	Seine Col. River	Silvers	Round	All Sizes	17½	17½	17½	17½	17½	Amendment No. 7
8	29A	Seine Col. Riv.	Silvers	Drawn	All Sizes	19¾	19¾	19¾	19¾	19¾	
	29A	Seine Col. Riv.	Silvers	Dressed	All Sizes	21¼	21¼	21¼	21¼	21¼	
9	29B	Seine Ore. Streams	Silvers	Round	All Sizes	17	17	17	17	17	
	29B	Seine	Silvers	Drawn	All Sizes	19¼	19¼	19¼	19¼	19¼	
	29B	Seine	Silvers	Dressed	All Sizes	20½	20½	20½	20½	20½	Amendment No. 15
10	30A & 30B	Seine	Salmon Fall Chums	Round	All Sizes		11½	11½	11½	11½	
	30A & 30B	Seine	Salmon Fall Chums	Drawn	All Sizes	12¾	12¾	12¾	12¾	12¾	
	30A & 30B	Seine	Salmon Fall Chums	Dressed	All Sizes		14	14	14	14	

(Testimony of Theodore J. Holdt.)

Miss Gallagher: I have, your Honor, before you a copy of the Pre-Trial Exhibits mentioned, and also Regulation 418, section 14 marked, which shows record-keeping requirements, section 7 marked, which shows the allowance for transportation, and also [18] Amendment No. 16, to which I referred in my opening statement. I have also handed a copy of each to Mr. Bassett.

Mr. Bassett: Thank you.

Miss Gallagher: If the witness will refer to all of the exhibits I should like to question him about them.

Q. Mr. Holdt, I direct your attention on Plaintiff's Exhibit No. 1 to column 5, which purports to show the maximum price which applies to each of the sales shown in column 3. Will you tell the Court the method which you used in selecting the maximum prices for these sales?

A. By reference to the price schedule I used the price that was indicated by the description on the sales invoice and the price that was on the sales invoice. The description was not sufficient in itself to identify the item but together with the price the item was placed in a bracket to which the schedule was applied.

Q. That method of computation was used for what period?

A. That method was used for the period from August to November 9th, and during that period the highest price permissible under the regulation in consideration of the description given on the

(Testimony of Theodore J. Holdt.)

invoice was used. That was to November 9th. From November 9th to December 31st, Amendment No. 16 applied, which stated that in the absence of sufficient description the lowest price shall be used for the variety or species, grade, style of dress, so that after November 9th if the invoice stated that the item was silvers, without any further description as to whether it was dressed or [19] drawn, or troll-caught, the lowest silver price was used; and the same with the other item, the Chinook. In some instances the item was merely described as salmon, without any identifying description. The price on the items mentioned as salmon varied from I think 15 to 35 cents. In such instance it was necessary to determine as nearly as possible from the price used on the invoice what particular kind of salmon it might be.

Q. Will you state whether or not in the making of your computations you have resolved questions in favor of the defendant?

A. Any case in which there was any doubt about it I have resolved the doubt in favor of the defendant.

Q. Now I direct your attention to the last line under column 5, which is marked overcharge, and ask you to state whether or not you personally calculated the overcharge entry for each of the sales?

A. I did.

Q. Have you worked those calculations over more than one time? A. Yes, I have.

(Testimony of Theodore J. Holdt.)

Q. Has anyone other than yourself checked the calculations?

A. Yes; Mr. Walker, an investigator from our office.

Q. Will you state whether or not since Exhibit 1 was first prepared and offered as our pre-trial exhibit you have studied the case any further?

A. Yes, I have.

Q. Will you state whether you have found it is proper to make any [20] changes in the results as shown on Exhibit 1? A. Yes.

Q. Will you state what those changes are and why it was proper that they be made?

A. The first change was in the period from November 3 to November 9 in the original computation.

Q. On what page will we find the calculations?

A. The computations, the dates of November 3 and 9 are on pages 23—18, 20, 23; also on page 19. On sheet number 18, item 3, I omitted the amount of that overcharge altogether. That was in the amount of \$59.21. On sheet number 20, item number 27 was omitted entirely. That was \$3.75. On sheet number 23 the items are marked total 266 pounds. The price of 33 cents was used instead of the price originally used, which made a difference of \$27.93.

Q. Why did you make that change in your calculations?

A. In the original calculation I used November 3 as the date of the amendment, whereas I should have used November 9 as the date of the amend-

(Testimony of Theodore J. Holdt.)

ment requiring that the lowest price shall be used if the item is not properly identified.

Q. Did you make any further changes in the calculations after the exhibit was made up?

A. Page number 1 of the exhibit, on the original calculation I used the highest price in the round. On revision of the calculations I used the highest price of the item, which would be the dressed [21] price, which made a difference on that sheet, that is sheet number 1, of \$105.99. The total overcharges on that sheet were \$23.27 instead of \$129.26.

Q. Have you made a total calculation of your changes? A. Yes, I have.

Q. Well, will you state whether or not you have used the new figures in the final alleged overcharges.

A. I have used the new figures in the final overcharges.

Q. Now are there any further changes which should be made in the exhibit as it now stands?

A. On the original—on the invoices there was no tax, state privilege tax or box charge, or freight charge indicated. However, we computed the total of those charges as paid when the items, when the merchandise was purchased, and deducted that total from the total amount of the overcharges, so that even though the state privilege tax and the box charges and the freight charges which may be added if separately indicated, even though they were not indicated I deducted them from the total amount of the overcharegs.

(Testimony of Theodore J. Holdt.)

Q. Can you state what is the total alleged amount of the overcharge?

A. It is two thousands——(witness pauses.)

Q. Well, Mr. Holdt, to save your time in calculating, I will ask you directly if my statement to the Court that \$2047.49 is the proper allegation of overcharges. [22]

A. According to my recollection, I think that is correct. I don't find the figure here.

Miss Gallagher: All right. You may cross examine, Mr. Bassett.

Cross Examination

By Mr. Bassett:

Q. What is your occupation or trade, Mr. Holdt?

A. I am an investigator for the Office of Price Administration.

Q. What are your qualifications for that? What is your education?

A. Well, I have four years of college education and I have had some, about thirteen years of business experience and some police experience.

Q. What was the business experience, Mr. Holdt?

A. I was in the wholesale and retail grocery business.

Q. Where?

A. Cincinnati, Ohio.

Q. What were your duties?

A. I was branch manager. The company had

(Testimony of Theodore J. Holdt.)

five branches and I was manager of one of the branches.

Q. What is your police experience?

A. I was with the United States Department of the Interior.

Q. When was that?

A. Since 1941 to March of 1944.

Q. Where was that? Where?

A. That was in Vancouver.

Q. Please? [23]

A. I was stationed at Vancouver.

Q. Washington?

A. Vancouver, Washington.

Q. What has been your experience in bookkeeping and accounting, Mr. Holdt?

A. Shortly after leaving high school I worked as an accountant—bookkeeper for one year with the R. Wallace & Sons Company, silversmith, in Chicago, and I took a course, which was not completed, at the University of Cincinnati, in bookkeeping.

Q. Were you ever engaged as an accountant or a bookkeeper?

A. No, I was not, with the exception of the period I mentioned before, shortly after leaving high school.

Q. You studied it? A. Yes.

Q. You never hired out as a bookkeeper?

A. With the exception of the period that I mentioned, my duties were not entirely bookkeeping. I had other duties, clerical duties.

(Testimony of Theodore J. Holdt.)

Q. Mr. Holdt, have you ever had any experience in the fish business?

A. No, not fresh fish.

Q. The first experience you ever had in this business was last March of this year?

A. That is right.

Q. When you were hired by the OPA? [24]

A. That is right.

Q. Mr. Holdt, you prepared these exhibits from the invoices, did you not? A. I did.

Q. You still have Mr. Joe Jaha's invoices up to the OPA?

A. No. They have been returned to him.

Q. Please?

A. Those have been returned to you.

Q. You still had them?

A. Oh, yes; I had them at that time.

Q. They were brought up there about Christmas time and remained there for some month, didn't they, Mr. Holdt?

A. I don't know.

Q. Well, you know that you were down also at Mr. Jaha's place of business, do you not?

A. That is right.

Q. And you found him cooperative, did you not? A. Yes, I did.

Q. You would say he helped you all he could, didn't he?

A. I think he did, yes.

Q. Mr. Holdt, you referred in your testimony to salmon. What do you mean by salmon, Mr.

(Testimony of Theodore J. Holdt.)

Holdt? What do you understand the term "salmon" to mean?

A. Salmon includes all the various varieties. Salmon is a species and includes Chinook, silvers, blueback or sockeye, steelheads, [25] fall.

Q. Fall, you said? A. Fall—f-a-l-l.

Q. Do you mind my asking you, Mr. Holdt, where you learned that?

A. I learned it largely through conversation with and contact with the trade, and through information that could be gained from regulations, and information gained by others in the business.

Q. Yes.

A. Not exactly in the business but who had contact with the business.

Q. Don't you know, as a matter of fact, Mr. Holdt, that since the time of the Indians on the Pacific Coast, and in the Northwest and in Canada ever since the time of the Indians the word "salmon" as used by fishermen or in the trade applies exclusively to Chinook, the Royal Chinook?

A. No, I don't know that to be a fact.

Q. Well, do you know that you could telephone any fisherman in the Northwest and ask him to send you some salmon and he would only send you one thing? A. He would send Chinook?

Q. Yes. A. That is right.

Q. He wouldn't send you sockeye, or fall, any more than he would send you suckers, would he? He would know that you mean Royal Chinook Salmon; isn't that right? [26]

(Testimony of Theodore J. Holdt.)

A. Well, I think he might ask what kind of salmon.

Q. If he did, but if he didn't?

A. If he didn't he would send me Chinook.

Q. Mr. Holdt, weren't there more pages to this exhibit when it was first prepared?

A. Twenty-three pages.

Q. I know you didn't hide any but I mean, for the purpose of my examination, weren't there some pages that were intended to show Mr. Jaha's purchases?

A. That was in the original computation after consultation with you.

Q. Yes. And that is where you indicated in your opinion he had purchased one hundred seventy some thousand pounds?

A. That is right, one hundred seventy-five thousand, according to records of the Fish Commission.

Q. Now Mr. Holdt, you know, of course, that that figure represented his gross purchase?

A. I do.

Q. Did you take into consideration that he had some between thirty and forty thousand pounds unsold and in storage?

A. As a matter of fact, I didn't think it was necessary to take that into consideration, because these computations cover only 42,000 of that 175,000 pounds. It wasn't possible for me to account for the other 133,000 pounds. So that these computations cover only 42,000 pounds. [27]

(Testimony of Theodore J. Holdt.)

Q. But they are of that 175,000 pounds?

A. They are.

Q. Not different fish, are they?

A. They are included in the 175,000.

Q. That is right. In your computations, Mr. Holdt, you have in many instances credited the defendant with the price of a fish round; isn't that true?

A. That is true, after November 9th.

Q. Yes.

A. The effective date of the Amendment 16.

Q. That means, in other words, you are saying, Mr. Holdt, that Mr. Jaha can only take credit for a round fish and you have reduced his selling price to that point since November 9th; isn't that true?

A. The regulation requires that I use the calculation after November 9th.

Q. I understand that. I am not quarreling with you about it, Mr. Holdt; I am only asking you if that is the method you followed.

A. That is right.

Q. Now you know, as a matter of fact, Mr. Holdt, that there isn't a place in Portland that Mr. Jaha sells to, or any other dealer sells to, that buys round fish? You know that, don't you?

A. I do not know that as a matter of fact.

Q. Well, may I ask you, you should know it shouldn't you? There is no dealer in Portland, nor restaurant, that would buy the [28] round fish?

A. Some dealers and restaurants do buy round fish.

(Testimony of Theodore J. Holdt.)

Q. Do you know any, Mr. Holdt?

A. I know of one that has. I know of a particular instance that has.

Q. But you know as a custom, as a general custom, that 99.44 per cent of the restaurants of Portland would not buy a round fish and take it out in the kitchen and give it to the chef and say, "Take the hide, tail and viscera from the fish"?

A. Well, I don't know about that percentage. I know that it is not often done, but it is in some instances.

Q. You would say it is rare, wouldn't you?

A. Well, I am not familiar enough with the restaurant business to say, no.

Q. Well, that is what I am getting at, Mr. Holdt. You should have taken that into consideration. shouldn't you?

A. I could not have taken it into consideration and yet followed the provisions of the regulation.

Q. The regulation said if he does not say—if he does not describe the dressing on there give him credit for the lowest grade?

A. That is right.

Q. And that is a round fish?

A. That is right.

Q. With its head and tail and insides in it: isn't that right? [29]

A. That is right.

Q. Now when you were computing those last pages of the original exhibit as to poundage, did you take into consideration the difference in the

(Testimony of Theodore J. Holdt.)

gross and net poundage of fish between a dealer's buying and selling weight? You know the factors that affect that, don't you?

A. Yes; yes, I do.

Q. What would they be, Mr. Holdt?

A. They didn't enter into the consideration, inasmuch as these computations are based only on a small percentage of the total purchases.

Q. Well, you can make any qualifying remark, subject to the limitations of the Court, but I would like to have you answer my question, if you will, Mr. Holdt.

A. I am sorry. I misunderstood you.

Q. You add anything you want, but what considerations, what elements do you take into consideration? If you took any, what elements did you take into consideration in arriving at the poundage of fish Joe Jaha could have sold from the pounds he bought?

A. I——

Miss Gallagher: Well, your Honor, I object to that question as not being proper cross examination. I am not going into the question of how much the defendant could have sold from how much he bought. We are examining as to what his records show that he [30] did sell.

Mr. Bassett: I am cross examining him, your Honor, on a report prepared by this gentleman, on this exhibit as originally introduced in this trial. I am cross examining him on that exhibit to show what he knows about it.

(Testimony of Theodore J. Holdt.)

The Court: Is the exhibit you have different from mine? Mine has twenty-three pages.

Mr. Bassett: Yes. That is the question I asked at first, your Honor. I was under the impression that the first exhibit introduced in this trial, the one from which he is reading, has more pages.

The Court: How many does yours have?

Mr. Bassett: Twenty-three.

The Court: You thought it had more than twenty-three pages?

Mr. Bassett: That yellow one, your Honor, yes.

The Witness: This has twenty-three.

Miss Gallagher: Your Honor, I think I can clear it up in Mr. Bassett's mind. During the course of the conversations we have held in our office we have gone through yellow page after yellow page and we have had a good many which we did not introduce into evidence at the time of the pre-trial. Mr. Bassett, I think you are thinking of a large page paper, out of which we made numerous computations of total purchases and total sales, are you not?

Mr. Bassett: Yes; that I am. [31]

Miss Gallagher: We have made such computations but they have never been introduced in evidence in this trial.

Mr. Bassett: Oh. All right.

The Court: What do purchases have to do with this case? That is a dumb question probably. I don't understand this case very well so far.

(Testimony of Theodore J. Holdt.)

Miss Gallagher: That is why I object to the question by counsel. Except as counsel has opened it up on cross examination we have not gone into the total number of pounds purchased by the defendant. We have concerned ourselves with the total number of pounds he has sold, as shown by his own invoices, and have totaled the purchase invoices which he gave to us in order to get from that the box, freight, tax that he had paid. Other than that——

The Court: Just to get that tax?

Miss Gallagher: That is the only use we have made of his purchase records for the purposes of this case. We have examined them and have discussed them a good deal but we have not brought them into use here.

The Court: But you want to inquire——

Mr. Bassett: I must confess, your Honor, my question is a little pointless, now that I learn those two pages were not introduced.

The Court: Oh.

Mr. Bassett: May I explain my point, your Honor, further? The OPA came to this defendant and said, "You bought 175,000 pounds [32] of fish last year. Now where is a record of your sale of it?" Well, of course the poor fellow can't show that, because when he sold the fish there were probably——

The Court: Yes. You explained that in your opening.

Mr. Bassett: Yes. All right. That is all, Mr. Holdt. Thank you.

(Testimony of Theodore J. Holdt.)

Miss Gallagher: That is all from me, Mr. Holdt.

(Witness excused.)

Miss Gallagher: And, your Honor, that constitutes the plaintiff's case.

Mr. Bassett: May I state to your Honor that I have not raised the question, and don't propose to raise any question, about the jurisdiction of the Court. I had this matter—that question is before this Court, is it not, in another case, and would, of course, affect this case similarly?

The Court: I don't know what you mean.

Mr. Bassett: Is there not before this Court in the Wheeler case the question of the jurisdiction of the right of Chester Bowles to bring such an action in this court?

The Court: The Wheeler case has passed into another jurisdiction.

Mr. Bassett: I beg your pardon?

The Court: The Wheeler case has gone to another jurisdiction.

Mr. Bassett: Yes. I understand that, your Honor. Well, I [33] shall continue to waive it anyway. I will call Mr. Jaha. Will you take the stand, Mr. Jaha, after being sworn.

Defendant's Evidence

JOE JAHA

was thereupon produced as a witness in behalf of the defendant and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Bassett:

Q. Your name is Joe Jaha; is that right?

A. That is right.

Q. And you are the owner of the Lighthouse Oyster Company?

A. The owner, and——

Q. The principal stockholder; is that not right?

A. Yes. I am not a corporation no more.

Q. That is right. You are now a sole trader, aren't you? A. Sole owner.

Q. You are a sole trader. And what is the nature of your business, Mr. Jaha?

A. Oysters.

The Court: This defendant is sued as a corporation.

Mr. Bassett: Yes, your Honor. I believe I spoke to counsel about that and agreed to permit them to amend, or whatever else was necessary. I want to raise no point about our entity, or the form of our entity. We are now sole trader. I was not counsel [34] for this gentleman when he changed his form of doing business.

The Court: When did you change?

A. December—January 1st.

(Testimony of Joe Jaha.)

The Court: '44?

A. '44.

The Court: He was doing business as a corporation during the times involved in the case?

Mr. Bassett: Yes, your Honor, from August to December.

The Court: Yes.

Mr. Bassett: Q. And the nature of your business is what? A. Oysters. Oysters.

Q. And what? Oysters and what?

A. Oysters and fish.

Q. And fish? A. And sea food.

Q. And how long have you been in this business?

A. Since 1930.

Q. 1930. And all of that time in Portland, Oregon? A. Portland, Oregon.

Q. Are you a large or small dealer?

A. When it comes to fish, a very small dealer, what you call a secondary wholesaler.

Q. As to fish you are a secondary wholesaler?

A. Yes.

Q. Of what did your staff consist in the last five months of last [35] year, Mr. Jaha?

A. What do you mean?

Q. Who do you employ?

A. Well, I got two driver.

Q. You have two drivers?

A. But I got seven oyster openers.

Q. In the fish business, I mean.

A. Two drivers.

(Testimony of Joe Jaha.)

Q. Two drivers and yourself?

A. Myself, and a bookkeeper.

Q. You are the active manager of that business, are you not? A. That is right.

Q. And a bookkeeper?

A. Four days a week.

Q. Four days a week. How long have you had this bookkeeper?

A. It is a good year and a half now, I think; a little over a year and a half.

Q. Over a year. And before that who did you have? A. A man and his wife, Jones.

Q. And how long were they with you?

A. Oh, they was with me for over six or seven year.

Q. When you engaged this new bookkeeper did you undertake to teach her the OPA law and rules and regulations?

A. She doesn't—that is all she does, is to keep books. She wouldn't—— [36]

Q. So that responsibility devolves upon you, then? A. That is me.

Q. And how do you get your information, Mr. Jaha?

A. Well, we get it by calling either wholesalers and the dealer we buy from, and what we are supposed to sell the fish for after we buy it from them. Say we bought it for twenty and supposed to sell it for twenty-three, and that is what we sell it for. And we call the OPA; we don't get much informa-

(Testimony of Joe Jaha.)

tion from that, and I generally call J. Lawrence and Portland Fish and the other sellers here.

Q. What happens when you call the OPA?

A. Well, it is, the prices they give us they read the rule to us and the price they give us is not in the picture at all. Some of it we can't even get our money back.

Q. Mr. Jaha, do the OPA change these rules now and then? A. Very often.

Q. And sometimes do they change them to take effect back some time?

A. Well, they did that this last September.

Q. What did they do?

A. Why, they changed the rule on salmon, and six days back, I think, or four days back—six days back.

Q. During what period was that?

A. That was——

Q. Was it during the Celilo run? [37]

A. Celilo run; that is right.

Q. Did that cause some difficulty?

A. Well, they did with lots of them. Not with me. I wasn't buying then.

Q. Have you kept these records to the best of your ability, as you understood them?

A. Well, as I understood, supposed to do business just like I was doing, just maintain the price, ceiling price like I was doing before. That is the way I had understood, to do like I was doing business before, except to maintain the ceiling price.

(Testimony of Joe Jaha.)

Q. And did you keep these records to the best of your ability, as you understood the law?

A. As I understood, yes. I wouldn't get any more than I was supposed to get.

Q. Did you ever knowingly and willfully charge in excess of the ceiling price, as you understood it?

A. No. If I did I wouldn't be there, because I thought I was selling at the price what should be sold.

Q. And did you make out your invoices the same way as all the people who sold to you during that period?

A. Well, not all of them. Some of them have sold to me, like Portland Fish. They sell to me the same way like I make my invoice. They add everything on. For instance, if I paid them eighteen I supposed to get twenty-two for it, which would give me four cents. [38]

Q. Is there anybody in Portland now in the market that you know of that will buy a round fish?

A. No. The only time they buy a round fish would be from a fisherman, if a fisherman come in off the river, or some sports fisherman wants to give a fish to the fish market.

Q. If an individual came in, you mean, from the river?

A. They would not buy it from a wholesaler. They will buy it from a sports fisherman, which they are not allowed to do it but they will do it.

Q. There is no such thing as selling round fish then from a commercial house?

(Testimony of Joe Jaha.)

A. No. We all sell dressed fish.

Q. In your business—you say you are a small dealer—do you ever sell these fish in portions?

A. Sir?

Q. Do you sell these fish in portions, part of a fish to one purchaser?

A. Well, during the wartime now the average, they can stand one fish, and some may want more, but before this the customers we sell to we have to cut a fish any time we go over fifteen pound.

Miss Gallagher: I didn't understand the answer to that question.

Mr. Bassett: I didn't hear it. Will you kindly read it.

The Witness: I said now they can stand a fish that comes to fifteen pounds, but before, some of them, if they come over [39] fifteen pounds they want cut; they want half, and lots of them want seven or eight pounds. If you haven't got it you have to cut half, one take the tail end and the other take the back end, or the head. Or we sell to small butchers. We don't sell any fish market, you might say, like——

Mr. Bassett: That is all, Mr. Jaha. Thank you.

Cross Examination

By Miss Gallagher:

Q. Mr. Jaha, have you ever had a copy of the regulation which concerns your business of fish, as a fish wholesaler? A. You mean a book?

Q. Yes; the regulation?

(Testimony of Joe Jaha.)

A. Yes, we have book.

Q. Do you know when you first got that book? When did you first have it?

A. I think when they first come out.

Q. When they first came out?

A. Maybe a month later, I guess. It couldn't be over a month later, I guess.

Q. When was the first time you came to the OPA office to get some help or information?

A. Well, I didn't go up. We called.

Q. When was the first time you called up there? I mean you, Mr. Jaha, in your business.

A. Oh, I think Mr. Elias at that time was working for me. I had [40] him call for me. I think he called in July. I don't know.

Q. In July. When you came to see me you didn't know much about the regulation at that time, did you?

A. To tell you the truth, I don't know much now.

Q. You say that some of your suppliers had their invoices made out differently from the way that you were making them out?

A. Yes. Some did. J. Lawrence was the only one.

Q. You also have said that sometimes when you called the OPA for price that the prices they gave you were not good because——

A. Well, they would read it for me like if I was reading a book, but that doesn't mean anything.

(Testimony of Joe Jaha.)

Now they give us a good example, the one they give us now. That is about three months ago.

Q. When you called for a price, Mr. Jaha, for Chinook salmon, a dressed Chinook salmon weighing fifteen pounds, was there any misunderstanding as to how many cents a pound you could sell that for?

A. The way Mr. McCargar gave us a price it doesn't go for the Portland Fish even, as they explained it to him that he was wrong, he should get more money for it.

Q. You say the price was wrong?

A. That is right.

Q. It is wrong why, Mr. Jaha?

A. On the frozen fish I don't know why, but Portland did tell Mr. McCargar he was wrong.

Q. We are talking about fresh fish, not frozen fish now. Is it wrong, what it says in the book, in the regulation, or is it just wrong the way you were told?

A. It is wrong the way we got it from him, the way he told us the price.

Q. I understood you to say that some of the prices that were given you were wrong because you could not get the money back out of it?

A. No. Some of it we couldn't.

Q. Some of it you could not get your money back on. How many employees do you have at your place down there altogether, not only on salmon but on your oysters? How large an establishment do you maintain?

(Testimony of Joe Jaha.)

A. Oh, we have got seven oyster openers, and I have got two in the back in the shipping room to take care of orders, loading trucks and so on, and one grader and one helper; that is four; and two drivers. That is thirteen.

Q. Thirteen altogether in your whole place of business down here on First Street in Portland?

A. That is right.

Miss Gallagher: Oh, I think that is all of my questions.

Redirect Examination

By Mr. Bassett:

Q. Just one question, Mr. Jaha. This exhibit shows you selling under the price as well as over the price?

A. I have sold under.

Q. Was that because you didn't know what the price was?

A. That is right. They changed. The price changed. I didn't [42] catch up with it.

Mr. Bassett: That is all. Thank you, Mr. Jaha.

(Witness excused.)

Mr. Bassett: Call Mr. Hughes.

TOMMY HUGHES

was thereupon produced as a witness in behalf of the defendant and, having been first duly sworn, testified as follows:

Direct Examination

The Clerk: Will you state your name, please.

(Testimony of Tommy Hughes.)

The Witness: Tommy Hughes.

Mr. Bassett: May it please the Court, I have called this gentleman, who is, I think, as well informed in this field as probably anyone in Portland, for the purpose of identifying and offering, with the permission of the Court and consent of counsel, a chart showing the method by which fish merchants try to abide by the OPA, and with the understanding that I might withdraw it. It is a working chart they use every day in their business. I would like to indicate to the Court the difficulties of merchants in complying with the OPA rules and regulations.

The Court: Go ahead.

Mr. Bassett: Q. Mr. Hughes, will you please state to the Court what that is.

A. Well, this is a list that we have made up in our business for the purpose of our keeping track—in order to keep track of [43] the prices of the different species of fish.

Q. Do you discuss that with any members of the OPA? A. This.

Q. Yes. A. No.

Q. I suppose they have seen it when they have been in your office? A. I imagine they have.

Q. And does that, Mr. Hughes, reflect what you people have to do to conform with the OPA rules?

A. Yes.

Q. And there are several pages there, are there?

A. Yes.

(Testimony of Tommy Hughes.)

Mr. Bassett: Mr. Bailiff, will you please hand that to the Court.

The Court: Let Miss Gallagher see it first.

Mr. Bassett: Yes. I intended to do that.

The Court: What firm is Mr. Hughes with?

Mr. Bassett: Mr. Hughes is with the J. E. Lawrence Company. They are one of the oldest brokers in Portland. I am going to rest on that, your Honor.

The Court: Oh, I see.

Mr. Bassett: That is our defense.

The Court: Oh, I see. Well, as the matter stands now, this does not mean a thing to me. What does this purport to be? I will come down there.

A. This is a chart that we made up of the different species and prices, to try to keep track of them a little easier, and this represents the number, the OPA number. This column is the species of fish. These are the different tables of prices.

The Court: That you can charge, or that you can pay? A. That we can pay and charge.

The Court: Cross examine, Miss Gallagher.

Miss Gallagher: No cross examination, Mr. Hughes.

Mr. Bassett: That is all, Mr. Hughes.

(Witness excused.)

Mr. Bassett: That is our case, your Honor.

The Court: Are you through?

Mr. Bassett: Yes. We rest, your Honor.

The Court: Any rebuttal?

Miss Gallagher: No rebuttal.

The Court: I need to ask some questions. I am awaiting a telephone call on an urgent personal matter which may require my leaving. If that were so I could ask what I need to ask now. I will begin with the possibility I may have to leave and see you again. I regret that for your sakes, if that occurs. Now Mr. Bassett, you really don't make any defense, do you? You just put the Government on proof?

Mr. Bassett: Yes, I do, your Honor. I am sorry to say I do, except as to willfulness and knowingly. [45]

The Court: Yes. Well, where does that leave me?

Mr. Bassett: I take it, your Honor, that the Government has alleged we have done these things willfully and knowingly.

The Court: Well, aside from "willfully," where does that leave you as to the two thousand dollars?

Mr. Bassett: Well, it leaves us as——

The Court: Where does it leave me? Not, "Where does it leave you?" Where does it leave me?

Mr. Bassett: To go over the history, your Honor, we start out here and in each state in this game it is always different. It is still uncertain, your Honor. It still is where the Government has not proved—has not fulfilled their obligation by a preponderance of the evidence to show this man guilty of overcharging knowingly and willfully.

The Court: Well, forgot the willfullness for a minute. Aside from willfullness he is subject to a judgment for overcharge, for the amount of the overcharge, aside from the willfullness.

Mr. Bassett: Well, he is subject to a charge for undercharge, too. He is subject to a penalty for undercharging, too, your Honor.

The Court: Well, forget that. These are all overcharges, aren't they, in the Government's exhibits?

Mr. Bassett: They are claimed as overcharges, yes.

The Court: And they total two thousand dollars?

Mr. Bassett: Well, they do today. This is the first time [46] they have, your Honor.

The Court: Yes, they total \$2000.00. So in the absence of some defense he is subject to judgment for at least \$2000.

Mr. Bassett: I am afraid he is.

The Court: Yes. Send me up a typical invoice that didn't have things on it. Your case, Miss Gallagher, is all based on the idea he didn't put sufficient information on his invoices, isn't it?

Miss Gallagher: Well, we are not charging him—the only way we could reach the lack of invoice keeping would be by an injunction, or something like that.

The Court: No, no. In any of these items did he straight out plainly overcharge, as shown by the face of his invoice?

Miss Gallagher: You can't tell, your Honor.

The Court: All right. Now that was my question a minute ago.

Miss Gallagher: Yes.

The Court: Your case is built up the way the accountants do sometimes. The information being inadequate, you have had to supply it by an arbitrary method, haven't you?

Miss Gallagher: That is right.

The Court: And as to following November 9th you were specifically authorized by the amended regulation to supply it in a certain way?

Miss Gallagher: That is right.

The Court: Now what method did you use before November 9th?

Miss Gallagher: Before November 9th, this invoice here says [47] salmon, silver S-i-l.

The Court: Yes.

Miss Gallagher: Twenty pounds.

The Court: What was inadequate about that?

Miss Gallagher: It didn't show whether it was dressed, round or drawn.

The Court: All right. What did you do then before November 9th?

Miss Gallagher: All right. It didn't also show it was troll-caught or seine-caught.

The Court: What did you do before November 9th?

Miss Gallagher: Before November 9th we looked at the silver salmon schedule, which is before you perhaps there, and gave him the highest price of silver salmon that is allowed on the schedule, going up to the dressed charge.

The Court: Then he charged more than that?

Miss Gallagher: Yes, your Honor.

The Court: Then he did overcharge, giving him the benefit of every doubt?

Miss Gallagher: Giving him—yes, your Honor.

The Court: How?

Miss Gallagher: Yes, your Honor, giving him the benefit of——

The Court: What about that, Mr. Bassett?

Mr. Bassett: We claim not, your Honor. We claim there is not one invoice in there—— [48]

The Court: Take that one right there.

Mr. Bassett: That is right, where they would say, for example, silvers 20, 35 cents a pound. Where that will differ is where they came from, one item, boxed and——

The Court: She says she gave you credit on that invoice for the highest price that you could charge for silvers on that day, the highest price you could charge, and that you charged more than that, according to that invoice.

Mr. Bassett: No, there is not an invoice of all these thousands where we did that, your Honor, and they can't show it.

Miss Gallagher: Oh, my!

Mr. Bassett: That is why I have said here——

The Court: Wait now. We have got something——

Mr. Bassett: Pardon me?

The Court: We have got something to fight about anyhow. Miss Gallagher says you are all wet; you heard her say that under her breath; that as to many items there they are giving you the

benefit of the highest price on that date on the item you have described, and you charged more than you could charge.

Mr. Bassett: Yet me confer with my expert.

The Court: I don't know whether she will want to stand right by that invoice. She was just using that as a typical one there.

Mr. Bassett: Yes.

The Court: I want you to take one where you can claim that for it, Miss Gallagher, that it describes it fully and specifically, [49] does not say just salmon but says silver, as that one did. Now then, wherever he charged more on that invoice than he was entitled to charge on that date for silvers of the highest grade——

Mr. Bassett: I note here, your Honor, on this one—we won't hold her to this one, either, but they didn't charge 35 cents. They charged 30 cents. They didn't mean 35 because the total price is \$6.00 on twenty pounds, which is twenty times 30 cents.

The Court: Well, let's get back now to the fundamental regulation prior to Novemebr 9th. I understood Miss Gallagher to say a minute ago, which seemed to clear the situation considerably, if she wants to stand by that and is able to support that position, that prior to November 9th, when they didn't have the benefit of this amended regulation, she gave your client the benefit of the doubt in every case, so that in every case it was a straight-out overcharge prior to November 9th, having given him the benefit of every doubt. That seems plain enough.

Mr. Bassett: Well, your Honor, I believe this to be a fact: That the major portion of this claimed overcharge is for salmon. That can vary, dressed and troll-caught, from 22 cents a pound to 36 cents, and that is where they came along and said, "You haven't indicated",—which the driver didn't lots of times, and when he came back if you would fire him the next fellow would go out and do the same thing.

The Court: She just said where you say salmon she gave you the benefit of the highest price every day. [50]

Mr. Bassett: That is not in keeping with what the exhibit shows. Many times they have been reduced from 36 to 22, and that is a lot——

The Court: Well, let's get into it.

Miss Gallagher: May I ask a question?

Mr. Bassett: The margin of fish, your Honor, is 2 cents or 3 cents.

The Court: Well, I don't want to get anything in my head except what I am talking about.

Miss Gallagher: Let me take invoice No. 38408 here. It is dated August 20th, and reads Salmon, in print, Chin., in writing; 17 pounds 35 cents. That may not be there.

Mr. Bassett: It is not on the exhibit.

Miss Gallagher: : It may not be.

Mr. Bassett: 38408?

Miss Gallagher: That is right.

Mr. Bassett: It is the sixteenth item.

Miss Gallagher: The sixteenth item, what page, 2?

Mr. Bassett: Yes.

Miss Gallagher: The selling price listed on the exhibit and listed on the invoice itself is 35 cents per pound for Chinook. Ceiling price as computed by us in column 5 is 33 cents. The ceiling price for August on Chinook, troll-caught, dressed, 12¾ pounds and over is 33 cents. That is the highest Chinook price during August among the dressed, round and drawn fish. [51]

The Court: Your claim is that that is what you did in every case prior to the amendment of the regulation?

Miss Gallagher: Yes, your Honor. And when we have given him that higher price he has gone over that higher price.

The Court: How are you going to get away from that, Mr. Bassett?

Mr. Bassett: By claiming, and I think rightfully, that it does not include insurance, ice and boxing, which comes to a cent and a half or more and gives us the right to charge 35.

Miss Gallagher: Insurance, ice and box?

Mr. Bassett: Yes, and box. Isn't that right, Joe?

Mr. Jaha: Freight and box.

Mr. Bassett: Freight and box.

The Court: You will have to state that again.

Mr. Bassett: You are entitled to charge, in addition to the selling price the freight and box that we don't get; we pay it; a cent and a half or two cents. We are entitled to add that to the selling

price of the fish; otherwise we would be selling fish for nothing. That makes up the 2 cents difference. That is just what he is doing here, your Honor.

Miss Gallagher: You will recall, though, your Honor, that from his purchase records he testified that we added up all the freight that he is shown to have paid, and all the box charges he is shown to have paid; all the state privilege tax he is shown to have paid; made the total of that and deducted it from the [52] total of the overcharges as we computed them here. So that he has been given credit for all the box, freight and taxes that he has paid.

Mr. Bassett: Well, if your Honor pleases, I of course would be less than honest to come here and say that these books are not deficient in some respects; they are that; but the two things the OPA knows—whether we can show it or not—is that we didn't sell round fish in Portland, and we didn't get any fish without freight and boxes, and that we did. Whether we are able to show it they know it. We don't get them in the Willamette River, your Honor. Our records may be subject to criticism, and I will join in the criticism, but that is the fact. We know that.

The Court: The round fish question does not come into it until after the amendment of November 9th?

Mr. Bassett: No. But that is two months of the five.

The Court: Well, lay that aside for the moment.

Mr. Bassett: All right. But during all of that

period, your Honor, we certainly all that period got our fish in Astoria, Puget Sound, California——

The Court: Now let's take the invoice that you have. Where and how did you give him credit for the freight and boxing, Miss Gallagher?

Miss Gallagher: There is no notation, I think I can fairly say, on any of the invoices, of an additional box or freight charge shown, so we took Exhibit No. 2, which is the compilation [53] of all his purchases, all the purchase records he turned over to us, and added up his box charges, his freight charges and his tax charges and deducted that total from the total alleged overcharges. You see, he has made no showing on any of his sales invoices.

The Court: But you deducted that from the total?

Miss Gallagher: Yes, your Honor. There is no showing on any of the invoices that he has charged anything for box, freight and tax.

The Court: Yes.

Miss Gallagher: And he is required to show it, and to show it separately.

The Court: Yes. All right. What she is saying then is—what was it you gave there a minute ago he charged on that date, 35 cents?

Miss Gallagher: 35 cents.

The Court: And the price of troll-caught was 33?

Miss Gallagher: Troll-caught dressed Chinook was 33, which is the dressed charge.

The Court: All right. He charged 2 cents more per pound on that item that day, charged 2 cents a pound more, less his freight and boxing.

Miss Gallagher: That is right. Less.

The Court: And you gave him that credit in gross?

Miss Gallagher: That is right, your Honor.

The Court: In your calculation? [54]

Mr. Bassett: Your Honor, she is talking now, if I may say that. We are entitled to 35 cents, I don't care whether she added it some place or subtracted it in another place, it doesn't make any difference what her bookkeeping is, on that date we are entitled to 35 cents for that fish, your Honor. That is a known quantity.

The Court: How do you know you were?

Mr. Bassett: Because by her own statement that 33 was the selling price, the ceiling, to which we can always add our freight and box.

The Court: Is that correct, under the OPA?

Miss Gallagher: That he may add his box and freight?

The Court: To his ceiling price?

Miss Gallagher: To his ceiling price.

The Court: Which was 33 that date. You state you charged 35?

Mr. Bassett: Yes.

The Court: Which you said included freight and boxing?

Mr. Bassett: Yes, your Honor.

The Court: She says then she gave that credit.

Mr. Bassett: She is being gratuitous now. How can she give me anything? I am entitled to 35 cents, your Honor.

Miss Gallagher: You have got your credit for that.

The Court: What were your totals. Let's see just the way you did it. What was the total overcharge before you gave him the [55] credit? You are being sued for \$2000.00.

Mr. Bassett: I want to break into her trend of thought here, your Honor, to say I thought this man was being tried that way, item by item; or we can show, just as we are now, item by item, that you can't arrive at any \$2000.00.

The Court: Now Miss Gallagher, what was the total overcharge before you gave him the credit for the freight and boxing?

Miss Gallagher: Total overcharges, August through December, \$2560.83.

The Court: \$2560.83. That is what this column, the last column in the exhibits, totals?

Miss Gallagher: After the corrections which were made and testified to.

The Court: Yes, by your accountant?

Miss Gallagher: Deduction for freight, box and tax, and such charges, appeared on the defendant's purchase invoices, \$430.03.

The Court: \$430.03, leaving the amount you are suing for?

Miss Gallagher: Net overcharges twenty thirty, then there is further deduction for another correction, which wasn't——

The Court: Well, don't complicate this any further. She says she gave you the 2 cents there.

Mr. Bassett: Well, your Honor, may I answer

it this way? This \$2000.00 is the product of a thousand items, all of which are similar to the one we just got over. How can you get to any figure, your Honor, unless they show how they arrived at it. [56] They have arrived at it by saying vaguely she gave me 2 cents someplace else. There is where I desire it, your Honor, right there on that invoice. That is where I deserve it. Then their total overcharges must be taken from the sum total of these invoices. They are all the same way. Why be indirect about what can be brought out? How much are we entitled to add on these things? Well, we are entitled to the OPA ceiling price, plus whatever we spend.

The Court: What is that particular item you are talking about you just read, Miss Gallagher? You were looking at an exhibit that you had in evidence.

Miss Gallagher: It was 38408. It reads August 20th, 35 pounds of Chinook, 17 pounds of Chinook, 35 cents, has a total extended from there——

The Court: What under the regulation should have been on that invoice that wasn't on there?

Miss Gallagher: Well, if it is fish that was caught in the Columbia River by seine, as fish up there is caught, Chinook and dressed, it should show, as he has since then begun to show, Columbia River fresh Chinook dressed.

The Court: All right. Now Mr. Bassett, an obvious comment on what you just said—that they should show you on every day's item what allowance they are making for freight and boxing—is that your client was not complying with the regu-

lation. Should his invoice have shown his charge for freight and boxing, too, [57] Miss Gallagher?

Miss Gallagher: Yes, your honor, stated fully.

The Court: Her answer to it is that, instead of putting her to all the trouble of showing it on each item, it was your client's duty, in the first place, to show it. Does he show it now in his invoices, Miss Gallagher—freight and boxing?

Miss Gallagher: I think not yet.

The Court: He hasn't got around to that yet?

Miss Gallagher: No. Those invoices are starting with March, 1944.

The Court: How could a salesman out on the street know what to show where he wrote an invoice out at the time he made the sale and came back from the restaurant? How could he show the freight and boxing, do you know?

Miss Gallagher: No. I think it might be some difficulty for the salesman himself out on the street to.

The Court: Yes. He says that was the custom—for them to write the invoices.

Miss Gallagher: On the street as they go out?

The Court: On the street, yes.

Miss Gallagher: I don't know what the setup is, whether he could fix the invoices when he comes back or not. I think counsel loses sight of this, your Honor, and I think it is important: That we have already in this first period gone as far as anybody could reasonably be expected to go, and further, in giving him the [58] dressed price for every bit of fish that he sold.

The Court: How much of this claim of \$2130.80 accrued after the amended regulation?

Miss Gallagher: The overcharges from November 9 to December 31, \$1073.51; the overcharges before that period, then are \$1764.00; is that right?

Mr. Holdt: Yes.

The Court: You get \$1057.29. You subtract \$1073.51.

Miss Gallagher: Oh, sure. Well, this figure on the top was made before the corrections were made, I see.

The Court: Now then, you say the matter began of the calculation after the amended regulation, Mr. Bassett?

Mr. Bassett: I didn't have an opportunity to give my notion to that last point.

The Court: Go ahead.

Mr. Bassett: Section 7 provides that this defendant may add his freight and boxing, and I don't understand yet that I have to set it out on my invoices. I am entitled to it by the law, not by virtue of setting it out.

The Court: Oh.

Mr. Bassett: I am entitled to it by the law.

The Court: She said she gave you \$430.03.

Mr. Bassett: Well, I hope your Honor won't think I am either dumb or stubborn, but I think that is going at this in reverse. First, they say, "You have overcharged \$5000.00. Well, we will [59] take off of that a thousand, and a thousand, and a thousand." Now there is no overcharge in

this case, we submit, your Honor. There is no over-charge. There is nothing to take from.

The Court: You haven't proved there is not.

Mr. Bassett: Well, I didn't think I had to, your Honor.

The Court: You say she has not proved there was?

Mr. Bassett:: I thought we were going to come in this court and they were going to go right down that list, and I so told her six or ten times. I have been in the OPA offices at least twelve times in the last ten months, on this case. I thought they would have to prove invoice by invoice. Every time they came up with an invoice like this one we could have shown it. We could have indicated to the Court they are not reasoning right.

The Court: Well, you still have that privilege.

Mr. Bassett: Let her bring each invoice up that she wants, your Honor.

The Court: They are all here. I am supposed to do all of this studying without any further help than has been given so far. They are all here, aren't they? Did you put them all in?

Miss Gallagher: The calculations from the invoices are in, your Honor.

The Court: Put all the invoices in, too. I will need them.

Miss Gallagher: They are in the possession of the defendant, except these sample invoices.

The Court: Yes. You gave them back to them?

[60]

Miss Gallagher: Yes, your Honor.

Mr. Bassett: I meant exactly at the beginning of this case, your Honor, that I was at a loss, because I didn't see how else it could be proven. That is a terrible thing to go before this Court with a thousand items. It would be an interminable thing.

The Court: That is the way things go. I have had worse than that happen.

Mr. Bassett: But that is why I was willing to stipulate with Miss Gallagher anything within reason, except that we didn't overcharge here, and I couldn't stipulate to that.

The Court: Well, of course that does not help me out any. That left me with things where they were. She says, you see, you did. You say you didn't. She has sample invoices here on a certain day the salesman sold salmon, without saying what kind of salmon it was. She gives you the benefit of the highest price that could be charged for salmon on that day. You still charge two cents more than that. You say that two cents was for freight and boxing. Your argument seems to be narrowed down to that point. She says instead of calculating freight and boxing for that particular 17 pounds of salmon that day, that she took the total freight and boxing that you paid over that period and deducted it from the gross, from the total overcharge. I don't see anything the matter with that reasoning, considering what she had to work with.

Mr. Bassett: I believe I can tell you what is wrong with it. [61] If she is giving me back 2 cents, she is crediting it on some other purchase or sale—put it that way, on some other sale—be-

cause she has not shown any overcharge there. I am entitled, under the law, on anything that is here, to 35 cents on that date. She had no two cents to give me. The law, section 7, gives me that 2 cents, not Miss Gallagher.

The Court: Do the freight and boxing run 2 cents?

Mr. Bassett: Yes. There is no question about that. That is the minimum.

The Court: That is the minimum?

Miss Gallagher: I think our figures will be off from Mr. Bassett's within a quarter of a cent, but the matter depends upon where it came from and what state tax was paid. There is one in Washington and one in Oregon.

Mr. Bassett: It can't be less than a cent and a half, and that entitles us to two.

Miss Gallagher: What is that?

Mr. Bassett: It can't be less than a cent and a half. Freight and boxing would not be less than $1\frac{1}{2}$ cent from any point.

Miss Gallagher: I think, your Honor, that we can fairly urge that when the defendant, by his own actions——

The Court: How could she show, Mr. Bassett, with the information available, where that salmon came from, whether the defendant would be entitled to a cent and a half or two cents?

Mr. Bassett: Under their own definitions, your Honor, a cent [62] and a half gives you two. They know it. They know we can't pay it. We would have to get it back. Then she would come to us

and say, "Where did you buy fish on that day? Was it down on the Oregon Coast, or California or Washington?" Well, we submitted all our invoices, where we bought our fish, every one of them, your Honor.

The Court: You might have bought at several places that day?

Mr. Bassett: But none of them that didn't have freight and boxing on it, your Honor.

The Court: Yes, but how could she be specific without knowing where that 17½ pounds of salmon came from?

Mr. Bassett: Well, we are not putting the burden on her, which, I think, of course, the law does, but we are still not putting the burden on her. There is no place we got fish that we didn't pay boxing and freight on.

The Court: You paid a cent and a half some places and two cents other places?

Mr. Bassett: We paid one and a half to three, your Honor, but one and a half gives us two.

The Court: How do you get that?

Mr. Bassett: We are entitled to two cents.

The Court: Under the regulation?

Mr. Bassett: Yes.

The Court: Minimum regulation?

Mr. Bassett: Yes. One and a half gives us two. [63]

The Court: Is that right?

Miss Gallagher: I am not certain I understand Mr. Bassett.

The Court: He says he is entitled in every case to a cent and a half to two cents.

Mr. Bassett: If it is a cent I am entitled to two.

The Court: In other words, in every case entitled to two?

Mr. Bassett: If it is a cent I would be entitled to two.

The Court: That is the first I have heard that.

Mr. Bassett: If, your Honor, there is less than one and a half——

The Court: Is there less than one and a half?

Mr. Bassett: ——I know I am entitled to two. One and a half entitles me to two.

The Court: Is there less than one and a half?

Mr. Bassett: Is there, Joe?

Mr. Jaha: On the boxing, you mean?

Mr. Bassett: Is there less than one and a half? Do you have less than one and a half?

Mr. Jaha: No; $.62\frac{1}{2}$ a cent; then there is a cent freight from Seattle, a cent from Tillamook, except if they come from Astoria that is .75.

Mr. Bassett: Well, that would be 1.65 cents. That is more than a cent and a half, so we would have two.

The Court: The answer, then, is freight and boxing is not less than one and a half in any case?

Mr. Bassett: Yes, that is the answer. [64]

The Court: And that under the regulations you claim that entitles you to two cents?

Mr. Bassett: Yes, your Honor. And I have been advised to that effect by Mr. McCargar many times.

Miss Gallagher: If that is your statement, Mr. Bassett, I shan't—I don't know; I don't think that is correct; but I shan't quarrel with my specialist, because I haven't gone specifically into the question.

The Court: Then on that particular invoice there would be no overcharge on that day?

Miss Gallagher: If it is fresh troll-caught Chinook.

The Court: Well, you presented the case on that theory?

Miss Gallagher: That is right.

The Court: Well, how many more invoices do you have there? You have just a few samples?

Miss Gallagher: A few examples. We have ten or fifteen, I guess.

The Court: All right. If you want to work a while longer we will. If you are tired you can come some other time. Whatever you wish. Say what you wish to say concerning the other invoices allowing two cents in every case for freight and boxing. What are your gross sales in dollars out of which these overcharges amounting to \$2130.80 occur?

Mr. Bassett: What were your gross sales in fish from August to December, where they claim these overcharges? [65]

Mr. Jaha: You mean the gross sales?

Mr. Bassett: Yes.

Mr. Jaha: I don't know.

The Court: What do you say, Mr. Holdt?

Mr. Holdt: I don't have any figures.

The Court: Do you have any idea? Fifty thousand dollars?

(Pause.)

Mr. Bassett: May I suggest it would be closer to twenty thousand.

The Court: How many months involved?

Mr. Bassett: Five, August to December, inclusive.

The Court: He knows about what his fish business is per month. What was it, four or five thousand dollars?

Mr. Bassett: Not oysters, but fish.

Mr. Jaha: That is it—I never keep them separate.

The Court: Oh, don't hedge around. He knows whether he does a fifty thousand dollar a year fish business, or a twenty-five thousand dollar a year fish business. He knows that—whether he does a hundred dollars a day or two hundred dollars a day.

Mr. Bassett: Do you? Well, state to the Court the total volume.

The Court: Let him tell you and then you tell me about how much fish he thought he sold during those five months.

Mr. Bassett: How much?

Mr. Jaha: Oh, about six or seven thousand, I guess; something [66] like that.

Mr. Bassett: What do you mean?

Mr. Jaha: A month.

Mr. Bassett: A month, of fish?

Mr. Jaha: Of fish.

Mr. Bassett: With no oysters?

Mr. Jaha: Well, there was oysters.

Mr. Bassett: Yes. Six or seven thousand a month of fish.

The Court: All right. Is that the idea you had, Mr. Holdt, or do you have anything on that?

Mr. Holdt: The only thing I would have to base an opinion on would be the total amount purchased during that time, which was 175,000 pounds, assuming a 25 per cent loss from that and shrinkage from that 175,000 pounds, and figuring an average price.

The Court: What did he pay for 175,000 pounds?

Mr. Holdt: Well, the sale price——

The Court: What did he pay for it?

Mr. Holdt: Well, the prices vary so greatly, your Honor.

The Court: You don't happen to know. All right. That is all right.

Mr. Bassett: May I try to answer it, your Honor?

The Court: He says six or seven thousand a month.

Mr. Bassett: I am sure that is a generous figure.

The Court: So this \$2130 in overcharges developed out of twenty-five or thirty thousand dollars worth of sales. That is [67] what I want to get. Or about an eight per cent overcharge.

Mr. Bassett: I would like to be able to ask him

—I don't know whether I asked my witness or not, but I imagine they do business on——

The Court: Or about 2 cents a pound in every case.

Mr. Bassett: That is above the margin. What is the margin? One to three cents, is it?

(Mr. Jaha talked to Mr. Bassett in an undertone.)

The Court: All right. Now can you go on and show us some other overcharges there?

Miss Gallagher: There is an invoice No. 38385——

Mr. Bassett: What date?

Miss Gallagher: Dated 8/31, on page 3.

Mr. Bassett: 38385?

Miss Gallagher: That is right. Name, Salmon; order, 28½ pounds; price, 30 cents. We have used for the maximum price 26¼ cents. The ceiling price for troll-caught dressed silvers 26½ cents a pound. Is that right, Mr. Holdt?

(Mr. Holdt conversed with Miss Gallagher in undertone.)

Miss Gallagher: Your Honor, this is exactly the reason that we gave the top price for the whole period of August to November 9, because of the extreme difficulty of going through invoice by invoice. We are not trying to maintain that this was round, or drawn, and rather than to go out and get all the customers in [68] to prove it we will give him the top price on everything.

The Court: All right. Now what does that show?

Miss Gallagher: That shows that the ceiling price used has been the ceiling price during August for troll-caught dressed silvers, all sizes, and it looks like a one-fourth instead of a one-half but it should be——

Mr. Bassett: It should be one-half.

Miss Gallagher: One-half. That is the schedule which has been used to determine what the price should have been on this invoice.

The Court: Well, what did he charge, and what should he have charged?

Miss Gallagher: Oh. He did charge 30 cents per pound. It is our contention he should have charged $26\frac{1}{2}$ cents a pound. Wait now. I made a mistake. He did charge $28\frac{1}{2}$ cents a pound. It is our contention he should have charged $26\frac{1}{2}$ cents a pound.

The Court: Well, he says freight and boxing takes that up again. He says he is entitled to two cents for freight and boxing.

Miss Gallagher: I know he has maintained that—maintained that all the way along—that two cents would take care of his boxing and freight on any overcharge we could show along here, because that was all it was over. I still maintain that he has not shown that there is any box charge. We don't know except from his very general statement here that he had to pay box and freight on everything.

The Court: Did he swear to that? [69]

Miss Gallagher: I think he was sitting here when he said it.

The Court: Put him on the stand, if he will swear to it.

Mr. Bassett: What would you say?

The Court: No. You talk to him off the record.

Mr. Bassett: I want to ask what his testimony is going to be, your Honor.

The Court: I see. Off the record, Mr. Person. He is consulting with his client.

(Mr. Bassett here conferred with Mr. Jaha aside.)

Mr. Bassett: All right. Take the stand.

JOE JAHHA

was thereupon recalled as a witness in behalf of the defendant and, having been previously sworn, further testified as follows:

Direct Examination

By Mr. Bassett:

Q. Mr. Jaha, what percentage of the total amount of your fish do you pay freight and tax and boxing on?

A. I think it is good 90 per cent of it, unless we send our truck sometimes during the Celilo. It still costs us the freight. That is on the round fish. The only thing we have ever got anything without boxing is when we sent our truck; that is, our own

out of all of our discussions, which were [72] all friendly and cooperative, and I think both sides said all they knew about it.

Miss Gallagher: To correct any impression that might be left here, these do not constitute samples for the total number of invoices on which we claim there are overcharges, or on which any agreement was made there might be overcharges. These are invoices we picked up since our first examination and since March, to check to see how carefully his records are being kept.

The Court: You have in your exhibit here about a thousand invoices?

Miss Gallagher: Yes.

The Court: It runs fifty to a page, and you claim an overcharge in every one of them?

Miss Gallagher: Yes, your Honor; and running down the column 5 would show that there are a good many more than counsel would like to give us the impression, on which there is an overcharge of just 2 cents. On some pages the overcharges are alleged at 2 cents. You start down on page 5, the overcharges run from $3\frac{1}{2}$ cents; one 4 cents, one other 4 cents, five or six 4-cent items, a few $2\frac{3}{4}$ cent items, and the rest are three and a half. Other pages show overcharges that are over and above the 2 cents, which he now is claiming that he is entitled to on each invoice. When we start to examine that, if we take an invoice on page 5, in which the overcharge is shown to be $3\frac{1}{2}$ cents, or shown to be 4 cents, then no doubt counsel will get up and argue, "Well, this [73] particular fish came from Puget

Sound, or Vancouver, B. C.; therefore our tax and freight is 4 cents. That is the price for which we are entitled to sell."

The Court: Whether it did or not we don't know.

Miss Gallagher: We have no idea, and no way of knowing. We have no idea what the man sold, except that he has sold certain items of salmon at a certain price. Any filet-ed fish we have left out of consideration and haven't claimed any overcharges.

The Court: So long as you have been so generous and have given him the benefit of every doubt, why didn't you give him the benefit of the doubt every day on the freight and box charges, or whatever it is? Why didn't you give him the benefit of Puget Sound?

Miss Gallagher: Well, we didn't want to give the whole case away, your Hoonr. There are a good many pounds of his fish that had no box charge to it and no freight charge to it.

The Court: He says 10 per cent.

Miss Gallagher: Well, 10 per cent in addition to that which he hauled from Celilo in his own truck.

The Court: How many pounds did he say he bought from Celilo?

Mr. Jaha: About twenty thousand.

Mr. Bassett: Twenty thousand.

The Court: About 20,000 pounds; and about what cost per pound?

Mr. Bassett: How much a pound, Mr. Jaha?

Mr. Jaha: We paid 8 cents up there. [74]

Mr. Bassett: Eight cents.

The Court: About \$1600 worth, out of a total of about \$30,000.00 involved in five months.

Mr. Bassett: On that point, your Honor, I could offer in evidence a copy, an exact copy of our report to the Commission, showing every pound we got, and that would indicate where it came from.

The Court: Well, if you people think I have the time and the ability to take a mass of stuff like this and figure it out item by item, you will have to disabuse your minds of that on both sides.

Miss Gallagher: Well, I don't—

The Court: You don't need to offer anything more, to dump anything more like that in my lap. That will do you more harm than good.

Mr. Bassett: Yes.

The Court: Without an analysis of it.

Mr. Bassett: It is analyzed, your Honor. It is just as simple as can be, I think.

The Court: That is what we are here for. You may put in anything you want to that you think will be helpful. Go ahead, Miss Gallagher.

Miss Gallagher: I was going to say, your Honor, that I think we can take advantage of the inference that can be raised in this case. The party has, by his own willful act, rendered it impossible [75] to show the quality or the value of the property he is being sued for, quoting from Jones on Evidence. "In such cases the inference is very strong that the facts suppressed would be unfavorable to the wrongdoer, and the courts have a right to act upon such a presumption."

A typical leading case which deals with a similar

problem to that is the old one of *Armory v. Delamirie*, in which a jeweler was being sued for the conversion of a precious stone. He didn't bring the stone into court but he did claim that it was of a lesser value than the plaintiff asked for, and the Court instructed the jury that they should find the jewel was of the highest value that would fit into the socket. I think that the case is analogous to ours where a defendant has not shown what he is entitled to, and I think that we can reverse that and maintain properly that the Court could find that he is entitled to the lowest value of that which he sold.

The Court: Does the Price Control Act say anything about burden of proof, or presumption?

Miss Gallagher: On this kind of a question, your Honor?

The Court: Yes, on this kind.

Miss Gallagher: No, it does not. It has a very important discussion of the burden of proof, though, on another question than this. That is the question of willfulness and precaution, which I should like very much to be heard on before we get through.

The Court: All right. Do it right now. [76]

Miss Gallagher: The Act as amended says that such amount shall be the amount of the overcharges, or \$25.00, whichever is greater; and we take it even the amount of the overcharges is greater. "If the defendant proves that the violation of the regulation in question was neither willful, nor the result of failure to take practicable precautions against the occurrence of the violation"—That puts the burden upon the defendant to plead that he was not willful,

and to plead that he had taken practicable precautions to avoid any violations; and it also puts the burden upon him to prove that he was neither willful, nor had he failed to take practicable precautions to avoid any violation.

Willfullness is of two kinds, as I always think of it. One is a man who sets out on July 13th, the effective date of this regulation, and says, "Now I don't like this regulation. I am going to disobey it." We don't maintain that he has done that, but the man who is so completely indifferent to the requirements of the regulation that he totally disregards the requirements of the regulation, is willful to that extent.

When it comes down to the question of whether or not he has taken any practicable precautions, there is no evidence at all offered by the defendant that he has taken any precautions, let alone all practicable precautions. He has continued to make out his invoices as he has in the years past. I have no criticism of what he did in the years past. It may have been businesslike for him, and it may not. It is none of my business to inquire [77] into that. But when he is put under a regulation, as he has been in this instance, and there were specific requirements made, then no matter what his practices as to how his invoices are kept, he is required to follow the regulations, and he has totally and completely disregarded those requirements. He has not, from any evidence he has offered, made any effort to instruct his employees on how to follow the requirements of the regulation and avoid violations.

He does not know yet what the requirements are, apparently, according to his testimony on the stand. He does say that the OPA has changed the regulation—they have changed the interpretation—there have been amendments. We grant that. There are always a good many amendments to attempt to take care of the changes of the seasons, the changes from experience under the regulation. And another thing that causes amendments from time to time to many of the regulations, including this one, is as one of the requirements is put into effect some method is designed for getting around the amendments, or what we call “evasive” practices, and amendments are made to take care of that. I think that the amendment’s requirements have not been changed so as to throw him into confusion and make it impossible to follow. He has not claimed that the prices set on Table E during the period of August 1 to December 31 have changed sufficiently to throw him off on that. The prices are set in dollars and cents; the fish is described by name and by type and style of dressing. [78]

I am frank to say—and as you will soon find out if you ever take a look at the fish regulation—that it is a difficult regulation, and that in order to follow it with any ease, particularly in order to have your employees follow it, a chart such as Mr. Hughes has shown to us is a very convenient thing, rather than running through the pages of the regulations. However, those charts are available. The prices have been digested by the Office of Price Administration, Price Division. Mr. Jaha could have called, could

have gotten the prices, apparently did call sometimes, and, as I understood his statement, the price wasn't right because he could not come out when he sold at that price. I don't know whether he has ever made any inquiry or has ever been interested in determining whether or not the price he paid to the producers are the correct prices. It may be he could not come out because he wasn't buying correctly. I doubt if he took the precaution to find out whether he was being charged the right price, but I am convinced, your Honor, he didn't take any precautions, other than talking to his neighbors, to determine that he was selling at the correct prices, and that his employees were selling at the right prices. He does not offer any evidence that he has posted a notice in his store telling what the prices are. He offers no evidence to show that he has used this chart. The evidence there was Mr. Hughes had made it up, or had used it. He does not show that Mr. Jaha has used it.

He has shown no evidence as to what he has done to his [79] employees when they have come in off the route with these invoices.

He says he has entire responsibility for the OPA regulations. I assume that at least once a day, or at least once a week he has gone through the invoices to see what his business is doing. Anyone who knew the regulation, as he is charged with knowing it, who has taken any precautions at all to follow the requirements of the regulation, would have taken one look at that and seen that he was not following out the regulations.

Then I maintain it was his duty to show that he had done something. If he found that his employees were consistently not following the requirements of the regulations he should have either taken over the responsibility himself and done whatever he has done after now trying to get him to do it, after a great deal of effort on our part. If his failure to take any of the precautions has contributed to his violations—and I think it is perfectly clear, from the whole case, that it has contributed largely to it—then as to the violation and as a matter of law I submit the defendant has not taken practicable precautions, and unless he has taken practicable precautions, then we maintain, your Honor, that he is liable, not for just the amount of the overcharges but for the full treble amount of the overcharges.

The Court: Why did the case stop the first of the year?

Miss Gallagher: I should like to explain that, which will cover a lot of other cases we have, your Honor. The examination of the thousands of invoices—there are, we figured, about [80] a thousand listed here; I don't know how many more than that were examined but a great many, a lot more—takes a good deal of time when you sit and type and copy it off and do your computing.

The Court: You don't know offhand what percentage of the total sales indicated overcharges?

Miss Gallagher: Do you know that, Mr. Holdt?

Mr. Holdt: No, I do not.

Miss Gallagher: We have to stop a case some place. We stopped this at the end of December. Otherwise we can never bring a thing to a head.

Mr. Bassett: We can work for six months computing our overcharges and——

The Court: I thought maybe he had reformed and he was to keep satisfactory records.

Miss Gallagher: I beg your pardon?

The Court: When did you become his advisor, Mr. Bassett?

Mr. Bassett: I was called into this case either December or January of this year.

The Court: After all of this had happened?

Mr. Bassett: Yes, your Honor.

The Court: How much of this did you say a moment ago happened after November 9th, in dollars? You gave me that figure a minute ago.

Miss Gallagher: \$1073.51. [81]

The Court: After November 9th. Now then, after November 9th you didn't give him the benefit of the doubt; you just applied the amended regulation?

Miss Gallagher: Well, we gave him the benefit of the doubt to this extent: that we classed his fish as closely as we could, according to his own classification, by name and by price; so that if his price was up in the category, or troll-caught Chinook, we put it up there. We gave him the round price, the lowest price, for that style of troll-caught, that type of fish, but not the highest price.

The Court: They are all round prices?

Miss Gallagher: Yes, your Honor, whether he sold it all round or not. Probably he didn't. Neither, I think, did he, before November 9th, sell——

The Court: The testimony has been there is no market in round fish.

Miss Gallagher: Yes, that is right. I mean the testimony is that. I can't testify to it myself.

The Court: If that is so, this regulation, literally applied, reaches an impractical result. About what is the difference between—I suppose when he goes up to Celilo he buys them round, doesn't he?

Mr. Bassett: Do you buy them round?

Mr. Jaha: Yes.

Mr. Bassett: Yes. There is one other difference, your Honor, [82] while you are on that subject—chums. Where we claim to have sold a salmon the OPA said it was a chum. There is a difference I think between 18 and 20, and 36 cents, and there is evidence here that a salmon is the only thing it could have been—Chinook. It could not be a chum. I mean, your Honor, while they were being so generous about giving us the benefit of the doubt, they didn't have to give us the benefit of a doubt to say every time we sold a salmon we sold a chum, and it wasn't chum, which was just half the value.

The Court: Any more, Miss Gallagher?

Miss Gallagher: Only to correct the last impression. Salmon listed at 35 cents is given a Chinook price and not a chum price, all on this one page 23, at least after November 9th.

The Court: How could you get round prices if there wasn't any market for round fish?

Miss Gallagher: Round fish sold, you mean?

The Court: Yes.

Miss Gallagher: It is sold by the primary fish wholesaler and by the producer. The producer is the first man who catches it out of the river. The first wholesaler who handles it is the primary shipper.

The Court: Show me how that would work. Turn over to your past November 9th list.

Miss Gallagher: Page 23 is past November 9th.

The Court: No overcharge shown on page 23?

[83]

Miss Gallagher: The overcharges are totaled at the bottom of the page, your Honor. The figures were all the same. The item is all the same, so that it has been carried down to the bottom of the page rather than put into each line.

The Court: Well, page 22, that first item?

Miss Gallagher: 19½ pounds of silvers, sold at 21½ cents.

The Court: 27½ cents.

Miss Gallagher: 27½ cents.

The Court: You gave him 17½.

Miss Gallagher: 17½ cents.

The Court: That is what the fisherman got for it?

Miss Gallagher: Oh, no. In November the fisherman—just a minute. Mr. Holdt, can you tell us? What did the fisherman get on it, if this comes from Celilo? Is that what you are assuming?

The Court: No, I don't want to assume anything. There is a spread of 10 cents there.

Miss Gallagher: Well, this price of 17½ cents is the Table E price. There are A, B, C, D and E.

The Court: What is E?

Miss Gallagher: That is the price for a service and delivery wholesaler, selling to the premises of retailers and restaurants.

The Court: That would be in Mr. Hughes' business?

Miss Gallagher: That would be Mr. Jaha's business.

The Court: No.

Miss Gallagher: I don't know about Mr. Hughes.

[84]

The Court: He just told us that he is—you, Mr. Hughes, sell to people like Mr. Jaha?

Mr. Hughes: Like Mr. Jaha?

The Court: Yes.

Mr. Hughes: Yes, we do.

The Court: And is he an E Man, Miss Gallagher?

Miss Gallagher: No, he is not an E man. He is a wholesaler selling to another wholesaler, either C table man or B table man, depending upon whether he buys his fish——

The Court: I am trying to get an understanding of this big spread here, 10 cents.

Miss Gallagher: That is the spread, your Honor, between dressed and round.

The Court: Yes, but there is no market on round other than by the fisherman, or the fellows out on the river.

Miss Gallagher: Well, there is a round price provided in the schedule.

The Court: You sell round fish, Mr. Hughes?

Mr. Hughes: Some.

The Court: Much?

Mr. Hughes: No.

The Court: Very little?

Mr. Hughes: Yes.

The Court: Who back in the chain handling fish is the last man to sell round? The fisherman catches it and he sells round to [85] somebody.

Mr. Hughes: He sells them to the primary wholesaler. That is the next rung on the line above the fisherman.

The Court: That would be the Columbia River?

Mr. Hughes: The Columbia River Packers Association.

The Court: All right. Now does he buy from them?

Mr. Hughes: Yes, he will buy from them.

The Court: But you buy dressed mostly?

Mr. Hughes: Yes.

The Court: So this 17½ then is what Columbia River paid to the fisherman, Miss Gallagher. That is what I am getting at. This is the fisherman's price?

Miss Gallagher: No, your Honor. The fisherman got less than that.

The Court: Well, this is what some fellow sold round for, and if the first packer dresses the fish, why, there is not any handling of round fish after it leaves the fisherman's hands.

Miss Gallagher: Well, I will get my schedule.

The Court: Is that a fair statement, Mr. Hughes, that I just made?

Mr. Hughes: Well, she is just taking the dressed price, E table, against the round price, E table.

The Court: Well, what does the round price, E table, apply to, to practical men in the trade?

Mr. Hughes: Well, it is not practical. [86]

The Court: Do you have a round price?

Mr. Hughes: There is a round price provided but I don't ever recall using it.

The Court: That is what I am getting at, as a practical matter.

Mr. Hughes: It is not practical, no.

The Court: As a practical matter, if the Columbia River, or somebody like them, were to buy from the fisherman, there is no handling of the fish undressed after that?

Mr. Hughes: That is the practice here.

The Court: Yes. Some people think I have an easy job. Well, I can't decide it now. I won't decide it now because I can't decide it now. I won't give any other reason. So we will adjourn until tomorrow morning.

(Thereupon, at 12:47 o'clock P.M., the foregoing hearing was concluded.)

[Title of District Court and Cause.]

REPORTER'S CERTIFICATE

I, Alva W. Person, hereby certify that on Thursday, October 12, 1944, I reported in shorthand all of the proceedings had and evidence given in the above entitled cause before the Honorable Claude McCulloch, Judge, and the proceedings had and evidence given upon said hearing was thereafter caused by me to be reduced to typewriting and the foregoing and hereto attached transcript, pages numbered 1 to 87, both inclusive, constitutes a full, true and accurate record of all of said oral proceedings had and evidence given upon said hearing on said date.

Dated at Portland, Oregon, this 30th day of October, A.D. 1944.

/s/ ALVA W. PERSON

Court Reporter [88]

[Endorsed]: No. 11015. United States Circuit Court of Appeals for the Ninth Circuit. Chester Bowles, Administrator, Office of Price Administration, Appellant, vs. Lighthouse Oysters, Inc., an Oregon corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed March 26, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the Circuit Court of Appeals of the United
States In and For the Ninth Circuit

No. 11,015

CHESTER BOWLES, Administrator, Office of
Price Administration,

Appellant,

v.

LIGHTHOUSE OYSTERS, INC.,

Appellee.

STATEMENT OF POINTS

The points upon which the appellant intends to rely on this appeal are as follows:

1. The District Court erred in failing to find as a matter of fact and in failing to conclude as a matter of law:

a. That each and all of the sales made by appellee as shown on plaintiff's pre-trial exhibit 1 were subject to and covered by Maximum Price Regulation 418;

b. That each and all of said sales were made at prices in excess of the maximum prices established by Maximum Price Regulation 418;

c. That the aggregate amount by which the prices at which said sales were made exceeded the maximum prices established by said Maximum Price Regulations 418 was \$2,047.49;

d. That none of the purchasers to whom said sales were made purchased the commodities involved in said sales for use or consumption other than in the course of trade or business;

e. That appellee failed to take practicable precautions to prevent the occurrence of said violations of said Maximum Price Regulations 418;

f. That appellant was entitled to recover of and from the appellee \$6,132.47.

2. That the District Court erred in failing to find as a matter of fact and in failing to conclude as a matter of law that each and all of the sales made by appellee subsequent to November 9, 1943, as shown on plaintiff's pre-trial Exhibit 1, were made at prices in excess of the maximum prices established by Maximum Price Regulation 418 and that the aggregate amount by which the prices at which said sales were made exceeded the maximum prices established by said regulation was \$1,073.00.

3. That the District Court erred in finding that the defendant is entitled to a credit of two cents per pound as a setoff against said overcharges prior to November 9, 1943.

4. That the District Court erred in failing to find as a matter of fact that appellant's violations of said Maximum Price Regulation 418 were the result of a failure to take practicable precautions against the occurrence of said violations.

5. That the District Court erred in failing to find as a matter of fact and in failing to conclude as a matter of law that the statement furnished the purchasers to whom the sales were made by appellee subsequent to November 9, 1943, as shown on plaintiff's pre-trial Exhibit 1, did not identify the size, grade and type of dressing of the fresh fish sold and that, therefore, the maximum prices at which

appellee was entitled to sell such fresh fish was the maximum price for the lowest priced size, grade and style of dressing of the species of fresh fish sold as established by said Maximum Price Regulation 418.

6. That the District Court erred in failing to grant judgment in favor of appellant in accordance with the prayer of the complaint filed herein as amended.

DAVID LONDON

Acting Regional Litigation

Attorney

FRANZ E. WAGNER

District Enforcement

Attorney

Attorneys for the Appellant.

[Endorsed]: Filed Apr. 3, 1945. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF RECORD

Appellant hereby designates the entire certified transcript, including all exhibits, to be contained in the record on appeal in this action.

DAVID LONDON

Acting Regional Litigation

Attorney

FRANZ E. WAGNER

District Enforcement

Attorney

Attorneys for the Appellant.

[Endorsed]: Filed. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION

Stipulation Concerning Exhibit No. One

It is hereby stipulated and agreed between the parties to the above entitled appeal by and through their respective attorneys that the clerk of the above entitled Court need not print plaintiff's Exhibit No. 1 so identified in the Court below but that said exhibit may be considered on the appeal of this action by the entitled Court to the same extent and with like effect as though it had been so printed.

Dated at Portland, Oregon this 1st day of May, 1945.

F. E. WAGNER

Of Attorneys for Appellant
ALTON JOHN BASSETT

Of Attorneys for Appellee

[Title of Circuit Court of Appeals and Cause.]

ORDER CONCERNING PRINTING OF
TRANSCRIPT

The parties hereto having by stipulation so agreed, it is now by the court

Ordered: That in printing the transcript herein the Clerk omit Exhibit No. 1 in the court below, but that the said exhibit may be considered by the court on this appeal as fully as though printed.

Dated: May 7, 1945.

CURTIS D. WILBUR

Senior U. S. Circuit Judge

[Endorsed]: Filed May 7, 1934. Paul P.
O'Brien, Clerk.

